TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~301.~~ ~~183~~ 183

TWO HUNDRED AND THIRTEEN KEGS OF FINE-CUT CHEWING TOBACCO, ETC., CHARLES H. WATERMAN, PLAINTIFF IN ERROR,

VS.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED DECEMBER 12, 1870.

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SUPREME COURT OF THE UNITED STATES.

No. 391.

TWO HUNDRED AND THIRTEEN KEGS OF FINE-CUT CHEWING TOBACCO, ETC., CHARLES H. WATERMAN, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

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1 Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States court-rooms, in the city of Chicago, in the district aforesaid, before the Hon. David Davis, one of the justices of the Supreme Court of the United States, presiding judge of said circuit court, on Wednesday, the thirteenth day of July, in the July term of said court, in the year of our Lord one thousand eight hundred and seventy, and of our independence ninety-fifth year.

WILLIAM H. BRADLEY, *Clerk.*

THE UNITED STATES
vs.
TWO HUNDRED AND THIRTEEN KEGS OF FINE-cut Chewing Tobacco and other property. } 9426.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that, on the thirty-first day of July, in the year
2 of our Lord one thousand eight hundred and sixty-nine, there was filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in said district, a transcript of a record of the district court of the United States for the northern district of Illinois, together with a writ of error and citation thereto attached, which said transcript, writ of error, and citation are respectively in the words and figures following, to wit:

3 *Transcript from district court.*

Pleas in the district court of the United States for the northern district of Illinois, held at the United States court-room, in the city of Chicago, in the district aforesaid, before the Honorable Thomas Drummond, judge of said district court, on Saturday, the third day of July, in the May term of said court, in the year of our Lord one thousand eight hundred and sixty-nine, and of our independence the ninety-third year.

W'M H. BRADLEY, *Clerk.*

THE UNITED STATES
vs.
TWO HUNDRED AND THIRTEEN KEGS OF FINE-cut Chewing Tobacco and other property. } 2095. Information.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that, on the sixth day of March, in the year of our Lord one thousand eight hundred and sixty-six, came Perkins Bass, esquire, the district attorney of the United States for said district, and filed in the office of the clerk of the district court of the United States for the district aforesaid, at Chicago, in said district, his informa-
4 tion against Two Hundred and Thirteen Kegs of Fine-cut Chewing Tobacco and other property, respondent, which said information is in the words and figures following, to wit:

Information.

UNITED STATES OF AMERICA,
Northern district of Illinois, to wit:

Be it remembered that, at a term of the district court of the United States for the northern district of Illinois, begun and held at Chicago,

in the said district, on the 1st Monday of March, in the year of our Lord one thousand eight hundred and sixty-six, Perkins Bass, esquire, the district attorney of the United States for the northern district of Illinois, who, in this behalf, prosecuteth in the name of United States, as well for the said United States as for such person or persons as may be entitled to a moiety of the forfeitures hereinafter mentioned, comes here into court, on this sixth day of March, in the year of our Lord one thousand eight hundred and sixty-six, being one of the days of said term, in his own proper person, and, as well for the said United States as for such person or persons as may be entitled to a moiety of the forfeitures hereinafter mentioned, and gives the said court here to understand and be informed that heretofore, to wit, on the fifth day of February, in the year of our Lord one thousand eight hundred and sixty-six, at
5 Chicago, in the northern district of Illinois, and within the jurisdiction of this honorable court, one George Schneider, esquire, who, then and there was the collector of the internal revenue of the United States for the first collection district of the State of Illinois, did seize and take as forfeited to the use of the United States, and such person or persons as might be entitled to a moiety of such forfeitures, divers, goods, wares, merchandise, articles, and objects, that is to say: Two hundred and thirteen kegs of fine-cut chewing tobacco, four boxes of fine-cut chewing tobacco, thirty-six and one-half barrels of leaf smoking tobacco, sixteen barrels of stem smoking tobacco, three kegs of stem smoking tobacco, four kegs of killikinick smoking tobacco, one box of killikinick smoking tobacco, one lot of loose stem smoking tobacco containing about 1,500 pounds, one other lot of loose stem smoking tobacco containing about 600 pounds; also, one and one-half hogsheads of leaf tobacco, one and one half barrels of liquorice, fifteen hundred pounds of tobacco stems, and twenty-five kegs of the kind of tobacco known as shorts; also, one steam-engine with boiler and shafting, one grindstone, two Rogers' tobacco cutting-machines, two tobacco presses and boxes, three hundred and ninety-nine tin tobacco cans, nine
6 wooden tobacco caddies, nineteen new tobacco kegs, one stem tobacco roller, one lot of tobacco drying-frames, one steam-pipe, one tobacco steam-box, and now hath the same in his custody as being forfeited for the causes hereinafter mentioned, to wit:

1st. For that at the time of the seizure aforesaid, to wit, on the 5th day of February, in the year of our Lord one thousand eight hundred and sixty-six, at Chicago, in said northern district of Illinois, the 213 kegs of fine-cut chewing tobacco, four boxes of fine-cut chewing tobacco, 36½ barrels of leaf *work*ing tobacco, 16 barrels of stem smoking tobacco, 3 kegs of stem smoking tobacco, 4 kegs of killickinik smoking tobacco, one box of killickinick smoking tobacco, one lot of loose stem smoking tobacco containing about 1,500 pounds, one other lot of loose stem smoking tobacco containing about 600 pounds, so seized as aforesaid, were then and there articles on which duties were then and there imposed by the provisions of the internal revenue laws of the United States, and the said articles were then and there found in the possession, custody, and control of Charles H. Waterman for the purpose of being sold and removed by him in fraud of the internal revenue laws of the United States, and with design to avoid payment of said duties contrary
7 to the statute of the United States in such case made and provided; whereby and by force of said statute the said articles have become and are forfeited to the uses in said statute specified.

2nd. For that at the time of said seizure, to wit, on the 5th day of February, in the year of our Lord one thousand eight hundred and

sixty-six, at Chicago, in the said northern district of Illinois, the following articles of raw material, to wit: 1½ hogsheads of leaf tobacco, 1½ barrels of liquorice, 1,500 pounds of tobacco stems, & 24 kegs of the kind of tobacco knows as shorts, seized as aforesaid, were found in the possession of Charles H. Waterman, who was then and there intending to manufacture the same into smoking tobacco, chewing tobacco, & other kinds of manufactured tobacco upon which duties were then and there imposed by the provisions of the internal revenue law of the United States, for the purpose of being sold by him in fraud of said law, and with design to evade the payment of said duties, contrary to the statute of the United States in such case made and provided; whereby and by force of said statute the said articles of raw materials have become and are forfeited to the uses in said statute specified.

3rd. For that at the time of said seizure, to wit, on the 5th day of February, in the year of our Lord one thousand eight hundred
8 and sixty-six, at Chicago, in the said northern district of Illinois, the following tools, implements, instruments, and personal property, to wit: One steam-engine, with boiler & shafting, one grindstone, two Rogers' tobacco cutting-machines, two tobacco presses and boxes, 399 tin tobacco cans, nine wooden tobacco caddies, nineteen new tobacco kegs, one stem-tobacco roller, one lot of tobacco drying-frames, one steam-pipe: one tobacco steam-box, so seized as aforesaid, were found in the building and enclosure, where certain articles of raw material, to wit; 1½ hogsheads of leaf tobacco, 1½ barrels of liquorice, fifteen hundred pounds of tobacco stems, and twenty-four kegs of that kind of tobacco known as shorts, were then and there found, to wit, in the tobacco factory of Charles H. Waterman, at number 22 Market street, in Chicago aforesaid, and were then and there intended to be used by said Charles H. Waterman in the fraudulent manufacture of said raw materials, that is to say, in the manufacture of said raw materials into smoking tobacco, chewing tobacco, and other kinds of manufactured tobacco upon which duties were then and there imposed by the provisions of the internal revenue laws of the United States, for the purpose of being sold by him in fraud of said laws, and with design
9 to evade the payment of said duties, contrary to the statute of the United States in such case made and provided; whereby and by force of said statute the said tools, implements, instruments, and other personal property have become and are forfeited to the uses in the said statute specified.

And the district attorney aforesaid, on behalf of the United States, saith that all and singular the premises are true; wherefore he prays that process in due form of law may issue against the property so seized as aforesaid, to enforce the forfeiture thereof, and requiring notice to be given to all parties concerned in interest to appear and show cause, on the return-day of said process, why such forfeiture should not be decreed.

PERKINS BASS,
U. S. Dist. Att'y for the Northern Dist. of Illinois.

(Endorsed:) Filed March 6, 1866. W'm H. Bradley, cl'k.

Thereupon, on the same day, to wit, the sixth day of March, A. D. 1866, a monition issued out of said clerk's office against said
10 respondent in the above-entitled cause, which said monition, together with the return of the marshal thereon, and the proof of notice by publication returned therewith, is in the words and figures following, to wit:

Monition.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

The United States of America to the marshal of the northern district of Illinois, greeting:

Whereas an information hath been filed in the district court of the United States in and for the northern district of Illinois, on the sixth day of March, in the year of our Lord one thousand eight hundred and sixty-six, by Perkins Bass, esq., district attorney of the United States for said district, in behalf of the United States, and all persons entitled to a moiety of the forfeitures herein, against Two Hundred and Thirteen Kegs of Fine-cut Chewing Tobacco, four boxes of fine-cut chewing tobacco, thirty-six & one-half barrels of leaf smoking tobacco, sixteen barrels of stem smoking tobacco, three kegs of stem smoking tobacco, four kegs of killikinick smoking tobacco, one box of killikinick smoking tobacco, one lot of loose stem smoking tobacco, containing about 1,500 pounds, one other lot of loose stem smoking tobacco, containing
10½ about 600 pounds; also, one & one-half hogsheads of leaf tobacco, one & one-half barrels of liquorice, fifteen hundred pounds of tobacco stems, and twenty-four kegs of the kind of tobacco known as shorts; also, one steam-engine with boiler & shafting, one grindstone, two Rogers' tobacco cutting-machines, two tobacco presses and boxes, three hundred & ninety-nine tin tobacco cans, nine wooden tobacco caddies, nineteen new tobacco kegs, one stem tobacco roller, one lot of tobacco drying-frames, one steam-pipe, one tobacco steam-box, now in the custody of George Schneider, collector of internal revenue for the first collection district in Illinois, for reasons and causes in said information mentioned, and praying the usual process and monition of the said court in that behalf to be made; and that all persons having, or pretending to have, any right, title, or interest therein, may be cited to appear and answer all and singular the matters in said libel articulately propounded, and that this court would be pleased to pronounce for the condemnation and forfeiture of said property above described the damages alleged in said information, besides costs of suit:

You are, therefore, commanded to attach the said two hundred and thirteen kegs of fine-cut chewing tobacco and other property
11 above described, and to detain the same in your custody until the further order of this court respecting the same, and to give due notice, by publication in some daily newspaper printed in the city of Chicago, for fourteen days previous to the day of trial, and by notice, posted up in the most public manner, for the space of fourteen days, at or near the place of trial, of such seizure and information to all persons claiming the said tobacco and other property above described, or knowing or having anything to say why this court should not pronounce against the same, according to the prayer of the said information, and that they be and appear before the said court to be held in and for the northern district of Illinois, at the United States court-room, in the city of Chicago, in said district, on the first Monday in April next, if that be a day of jurisdiction; if not, then on the first day of jurisdiction thereafter, at 10 o'clock in the forenoon of that day, then and there to interpose a claim for the same, and to make their allegations in that behalf.

And what you shall have done in the premises, do you then and there make return, together with this writ.

Witness the Honorable Thomas Drummond, judge of the said
12 court, this sixth day of March, in the year of our Lord one thousand eight hundred and sixty-six, and of our independence the 90th year.

[SEAL.] W'M H. BRADLEY, *Clerk.*

Under and by virtue of the writ hereto attached, I attached, on the 8th day of March, A. D. 1866, all of the following described property, to wit: 213 kegs of fine-cut chewing tobacco, 4 boxes of fine-cut chewing tobacco, 36½ barrels of leaf smoking tobacco, 16 barrels of stem smoking tobacco, 3 kegs of stem smoking tobacco, 4 kegs of killikinick smoking tobacco, 1 box of killikinick smoking tobacco, one lot of loose stem smoking tobacco containing fifteen hundred pounds, more or less, the precise quantity thereof not being known, one other lot of loose stem smoking tobacco containing 600 pounds, be the same more or less, the precise quantity thereof not being known; 1½ hogsheads of leaf tobacco, one & one-half barrels of liquorice, a quantity of tobacco steins, the precise quantity not known, but supposed to be about fifteen hundred pounds; 24 kegs of the kind of tobacco known as shorts; one steam-engine with boiler and
13 shafting, one grindstone, two Rogers' tobacco cutting-machines, two tobacco presses and boxes, 399 tin tobacco cans, nine tobacco caddies, 19 new tobacco kegs, one steam tobacco roller, one lot of tobacco drying-frames, one steam-pipe, and one tobacco steam-box, the same having on the day above mentioned been delivered to me by George Schneider, collector of internal revenue for the first collection district in Illinois, and I now hold and detain the same in my custody by virtue thereof; and I have also given due notice by publication and by posting up, according to the command of said writ.

Dated April 2nd, 1866.

J. R. JONES,
U. S. Marshal.
By A. B. COTES,
Deputy.

(Endorsed:) Filed this 9th day of Oct., A. D. 1869. W. H. Bradley, clerk.

Proof of notice by publication.

Public notice is hereby given that, on the 6th day of March, A. D. 1866, a monition issued out of the district court of the United States for the northern district of Illinois, under the hand of the clerk and the seal of said court, in a cause wherein an information had been filed in said
14 court, on the said above-mentioned day, by Perkins Bass, esq., district attorney of the United States for said district, on behalf of the United States, and all persons entitled to a moiety of the forfeitures therein against Two Hundred and Thirteen Kegs of Fine-cut Chewing Tobacco, four boxes of fine-cut chewing-tobacco, thirty-six and one-half barrels of leaf smoking tobacco, sixteen barrels of stem smoking tobacco, three kegs of stem smoking tobacco, four kegs of killikinick smoking tobacco, one box of killikinick smoking tobacco, one lot of loose stem smoking tobacco containing about 1,500 pounds, one other lot of loose stem smoking tobacco containing about 600 pounds; also, one and one-half hogsheads of leaf tobacco and one and one-half barrels liquorice, fifteen hundred pounds of tobacco stems and twenty-four kegs of the kind of tobacco known as shorts; also, one steam-engine with boiler and shafting, one grindstone, two Rogers' tobacco cutting-

machines, two tobacco presses and boxes, three hundred and ninety-nine tin tobacco cans, nine wooden tobacco caddies, nineteen new tobacco kegs, one stem tobacco roller, one lot of tobacco drying-frames, one steam-pipe, and one tobacco steam-box, then in the custody of George Schneider, esq., collector of internal revenue for the first collection district in Illinois, alleging in substance that the above-described property is forfeited, by reason of violations of provisions of the internal revenue laws of the United States, by virtue of which monition I have taken the said property into custody; and notice is hereby further given that the said monition is returnable on the first Monday in April next, when, if that should be a day of jurisdiction, (or, if not, then on the first day of jurisdiction thereafter,) at ten o'clock in the forenoon of that day a hearing of the said cause will be had, and that all persons claiming the said property or concerned in interest therein, or in any part thereof, or knowing or having anything to say why the said court should not pronounce against the same, according to the prayer of the said information, are required to be and appear before the said court, to be holden at the United States court-room, in the city of Chicago, in said district, on the said first Monday in April next, if that should by a day of jurisdiction, (or, if not, then on the first day of jurisdiction thereafter,) at 10 o'clock in the forenoon of that day, then and there to interpose a claim for the same, and to make their allegations in that behalf, and to show cause, if any they have, why the forfeiture prayed for in said information shall not be decreed.

15

Dated March 17, 1866.

J. R. JONES,
United States Marshall for the Northern District of Illinois.
By A. B. COTES.

This certifies that a notice, of which the annexed printed slip is a true copy, was published in every successive publication or number of the Chicago Daily Evening Journal, a newspaper printed and published daily, except Sundays, in the city of Chicago, in the county of Cook, in the State of Illinois, from and including the 19th day of March, A. D. 1866, to and including the 31st day of March, A. D. 1866, the same having been published, as aforesaid, twelve times, and the date of the first paper containing the same being the 19th day of March, 1866, and the date of the last paper containing the same being the 31st day of March, 1866, and the first of said publications, as aforesaid, having been made on the fourteenth day previous to the first Monday in April, A. D. 1866.

16

Dated at Chicago, this 2nd day of April, A. D. 1866.

CHARLES L. WILSON, & CO.
Publishers of the Chicago Daily Evening Journal.

[5c't stamp, cancelled.]

(Endorsed:) Filed Oct. 9th, 1869. W'm H. Bradley, cl'k.

On this day, to wit, the sixteenth day of March, in the March term, A. D. 1866, of said court, in the record of the proceedings thereof in the above-entitled cause is the following entry, to wit:

17

Order.

THE UNITED STATES OF AMERICA
vs.
213 KEGS FINE-CUT CHEWING TOBACCO. } Information.

The district attorney comes & deposits in court a ledger marked or

indorsed Waterman & Gage, & also a day-book, marked W. & G. on the back, to be used in the investigation & hearing of this case, and it is ordered that they be retained by the clerk, subject to the order of the court.

On this day, to wit, the twenty-third day of March, A. D. 1866, came Matthias Clump, by E. F. Runyan, his attorney, and filed in said clerk's office his answer in the above-entitled cause, which said answer is in the words and figures following, to wit:

Answer of M. Clump.

STATE OF ILLINOIS, *County of Cook, ss:*

United States district court in & for the northern district of Illinois.

UNITED STATES
vs.
C. H. WATERMAN.

Matthias Clump, mortgagee of a portion of the property taken in the above cause, for answer to said bill or complaint against said Waterman, says he knows nothing of the matters and things therein
18 charged; he further answering, says that, on or about the first day of December, A. D. 1864, he loaned to said Waterman the sum of two thousand dollars in lawful money of the United States of America; that to secure the payment of said money, he took from said C. H. Waterman his promissory note of that date, for that amount due one year after date, secured by a chattel mortgage upon his, said Waterman's, machinery; that, on the first day of December, A. D. 1865, this claimant extended the time of payment of said money to said Waterman, at the special request of said Waterman, and greatly to his, this claimant's, disadvantage, for five months, by taking a new note, bearing date December first, A. D. 1865, for the sum of two thousand dollars, due in five months after date, to draw interest at the rate of ten per cent. per annum; and, to secure the payment of said note, this claimant took a chattel mortgage, which was duly stamped, acknowledged, and on the same day filed for record in the recorder's office of Cook County, Illinois, and recorded in book 36 of chattel mortgages, on page 332, as will appear by the note and mortgage, which are ready to be produced to the court. Said claimant would further set forth and show that said mortgage is upon one steam-engine and boiler, and all the fixtures thereto belonging; also, two Rogers' tobacco
19 machines, and two tobacco presses, and one set of tobacco rollers, one large grindstone, fourteen racks for drying tobacco, and screens for the same; all of said property being in building No. 22 Market street, known as the Chicago Union Tobacco Works. Said claimant would further state that said property has been, as he is advised, taken possession of by the Government of the U. S. on account, as he is advised, of the breaking of or evading the internal revenue laws; that he knows nothing of the guilt or innocence of said Waterman, but he knows that his claim, as above stated, is due and owing to him, and he claims said machinery to the amount of his note.

MATTHIAS CLUMP.

Subscribed and sworn to before me this 23rd day of March, A. D. 1866.

[SEAL.] DANIEL J. AVERY, *Notary Public.*

[5ct. stamp, cancelled.]

(Endorsed:) Filed March 23rd, 1866. W'm H. Bradley, cl'k.

On this day, to wit, the thirty-first day of March, A. D. 1866, came Charles H. Waterman, by J. H. Knowlton, esq., his proctor, and filed in said clerk's office his answer in the above-entitled cause, which
20 said answer and the stipulation for costs filed at the same time, are respectively in the words and figures following, to wit:

Answer of C. H. Waterman.

UNITED STATES OF AMERICA:

The district court of the United States for the northern district of Illinois, ss: March term, 1866.

The answer of Charles H. Waterman to the libel of information of the United States, by Perkins Bass, esq., the district attorney of the United States for the northern district of Illinois, exhibited and filed in said district court on the sixth day of March, in the March term of said court, in the year of our Lord eighteen hundred and sixty-six, against Two Hundred and Thirteen Kegs of Fine-cut Chewing Tobacco, four boxes of fine-cut chewing tobacco, thirty-six and one-half barrels of leaf smoking tobacco, sixteen barrels of stem smoking tobacco, three kegs of stem smoking tobacco, four kegs of killikinick smoking tobacco, one box of killikinick smoking tobacco, one lot of loose stem smoking tobacco, containing about 1,500 pounds, one other lot of loose stem smoking tobacco, containing about 600 pounds; also, one and one-half hogsheads of leaf tobacco, one and one-half barrels of li-
21 quorice, fifteen hundred pounds of tobacco stems, and twenty-five kegs of the kind of tobacco known as shorts; also, one steam-engine with boiler and shafting, one grindstone, two Rogers' tobacco cutting-machines, two tobacco presses and boxes, three hundred and ninety-nine tin tobacco cans, nine wooden tobacco caddies, nineteen new tobacco kegs, one stem tobacco roller, one lot of tobacco drying-frames, one steam-pipe, one tobacco steam-box.

And now comes Charles H. Waterman, of the city of Chicago, in the county of Cook, and State of Illinois, with the consent of the said Perkins Bass, esquire, as district attorney of the United States for the northern district of Illinois, on behalf of the said United States, and for answer to the aforesaid libel of information, doth allege and propound as follows, to wit:

First. That it is true, as in the first article of the said libel of information is alleged and pleaded, that the said George Schneider, as collector of the internal revenue of the United States for the first collection district of the State of Illinois, did seize and take as forfeited to the use of the United States and such person or persons as might be entitled to a moiety of such forfeiture, the two hundred and thirteen kegs of fine-cut chewing tobacco, four boxes of fine-cut chewing tobacco, thirty-
22 six and one-half barrels of leaf smoking tobacco, sixteen barrels of stem smoking tobacco, three kegs of stem smoking tobacco, four kegs of killikinick smoking tobacco, one box of killickinick smoking tobacco, one lot of loose stem smoking tobacco containing about 1,500 pounds, and one other lot of loose stem smoking tobacco containing about 600 pounds, in the said first article of the said libel of information mentioned, and that said seizure was made on the fifth day of February, in the year of our Lord eighteen hundred and sixty-six, in the city of Chicago, in the county of Cook, and State of Illinois, in said northern district of Illinois.

And the said Charles H. Waterman, to the said first article of the said libel of information, doth further allege and propound that it is true, as in the said first article of the said libel of information is alleged and pleaded, that the last aforesaid-mentioned articles of property were, at the said time and place of the said seizure thereof as aforesaid, articles on which duties were then and there imposed by the provisions of the internal revenue laws of the United States; but the time limited by the said revenue laws of the United States for the payment of the said duties upon the said articles imposed had not expired at the
23 time the same articles were seized as aforesaid and he, the said Charles H. Waterman, wholly excluded from the care, custody, possession, and control thereof by the said George Schneider, as such collector as aforesaid.

And the said Charles H. Waterman, to the said first articles of the said libel of information, doth further allege and propound that it is true that the last herein above-mentioned articles of property were, at the time and place of the said seizure thereof as aforesaid, found in the possession, custody, and control of him, the said Charles H. Waterman.

And the said Charles H. Waterman, to the said first article of the said libel of information, doth further allege and propound that it is not true, as in the said first article of the said libel of information is alleged and pleaded, nor is it otherwise true that the last herein above-mentioned property, or any part or portion thereof, was, at the time when and *and* the place where the same articles of property were seized as aforesaid, nor at any other time or place, in the possession, custody, or control, nor was the same, or any part thereof, found in the possession, custody, or control of him, the said Charles H. Waterman, for the purpose of being sold and removed, or sold or removed by him, the said Charles H. Waterman, in fraud of the internal revenue laws, or in fraud of
24 any revenue law of the United States, nor with the design to avoid payment of the duties or any of the duties thereon imposed, contrary to the statute of the United States in such case made and provided, or otherwise.

And the said Charles H. Waterman, to the said first article of the said libel of information, doth further allege and propound that it is not true, as in the said first article of the said libel of information is alleged and pleaded, that the last herein above-mentioned articles of property, or any of them, or any part thereof, are forfeited to any use specified in any statute of the United States for the causes, or for any cause alleged in the said libel of information.

And the said Charles H. Waterman, to the first article of the said libel of information, doth further allege and propound that he, the said Charles H. Waterman, *to the first article of the said libel of information, doth further allege and propound that he, the said Charles H. Waterman,* is the owner of all the articles of property specified and mentioned in the said first article of the said libel of information, and that no one else is such owner, unless two instruments, executed by him, the said Charles H. Waterman, one on the third day of November, in the year of our Lord eighteen hundred and sixty-five, in the said city of
25 Chicago, and the other on the twenty-eighth day of the month and year last named, vests the bank of Montreal, or its agent, one R. Reid of said city of Chicago, with the title to the said last-mentioned fine-cut chewing tobacco, or to some part thereof, and which said first-mentioned instruments *is* in the words and figures or to the effect following, that is to say:

"CHICAGO, *3rd November*, 1865.

"Received in store at No. 22 Market street, Chicago, one hundred and fifty barrels of fine-cut chewing tobacco, which I hold subject to the order of R. Reid, ag't, herein deliverable free of charge on return of this receipt.

"C. H. WATERMAN."

[Rev. stamp, 60-c'ts, cancelled.]

And which said instrument was executed and delivered to said R. Reid by him, the said Charles H. Waterman, for the purpose of, and for the bona fide intent of, securing the payment of a large sum of money, to wit, the sum of ten thousand dollars, previously loaned to him, the said Charles H. Waterman, by the bank of Montreal aforesaid, through the said R. Reid, its agent, and of which said sum of money there still remains unpaid the sum of eight thousand five hundred dollars, besides interest thereon.

26 And the said one hundred and fifty barrels of tobacco, in said instrument mentioned, were intended to embrace and mean fine-cut chewing tobacco manufactured by him, the said Charles H. Waterman, and by the word "barrels" in the said instrument was intended "kegs." And the said instrument secondly above mentioned is in the words and figures, or to the effect following, that is to say:

"CHICAGO, *28th of November*, 1865.

"Received 22 Market street, from Warrick Martin, 150 ba'l*ls* fine-cut chewing tobacco which I hold subject to his order herein, deliverable free of charge on return of this receipt.

"C. H. WATERMAN."

[Rev. stamps, 60 cts., cancelled.]

And which said receipt, on the day of the *day of the* date thereof, was assigned by the said Warrick Martin, by his endorsement thereon, and the same so endorsed was thereafter immediately delivered to the said R. Reid, and which said last-mentioned instrument was so as aforesaid executed, indorsed, and delivered for the purpose, and with the bona fide intent, of securing the payment of the aforesaid borrowed ten thousand dollars to the said bank of Montreal, so far as the
27 same was then unpaid, and the said one hundred and fifty "balls" of tobacco mentioned in said last-described instrument were intended to embrace and to mean fine-cut chewing tobacco, manufactured by him, the said Charles H. Waterman, and by the abreviation "ba'l*ls*" also mentioned in said last-described instrument was intended "kegs."

Second. And the said Charles H. Waterman, as to the second article of the said libel of information, doth further allege and propound that it is true, as in the said second article of the said libel of information is alleged and pleaded, that, at the time of the seizure of the aforesaid articles of property, to wit, on the fifth day of February, in the year of our Lord eighteen hundred and sixty-six, at Chicago, in the northern district of Illinois, the following articles of raw material, to wit: One and one-half hogsheads of leaf tobacco, one and one-half barrels of liquorice, fifteen hundred pounds of tobacco stems, and twenty-four kegs of the kind of tobacco known as shorts, seized as aforesaid, were found in the possession of him, the said Charles H. Waterman, and that he, the said Charles H. Waterman, then and there, that is to say, at the time and

place of the aforesaid seizure of the said articles of property as
28 aforesaid, was intending to manufacture the said last-mentioned raw materials into smoking tobacco, chewing tobacco, and other kinds of manufactured tobacco.

And the said Charles H. Waterman, to the said second article of the said libel of information, doth further allege and propound that it is not true, as in the said second article of the said libel of information is alleged and pleaded, that, at the time of the said seizure of the herein above last-mentioned articles, being raw materials, there were any duties imposed upon the said articles of property herein above last mentioned, or upon any of them, or upon any part thereof, by the provisions of the internal revenue laws of the United States.

And the said Charles H. Waterman, to the said second article of the said libel of information, doth further allege and propound that it is not true, as in the said second article of the said libel of information is alleged and pleaded, that he, the said Charles H. Waterman, at the time and place of the said seizure of the herein above last-mentioned articles of property as aforesaid, or at any other time or place was intending to manufacture the said above last-mentioned articles of property, or any of said articles, or any part thereof, into smoking
29 tobacco, chewing tobacco, or other kind or kinds of manufactured tobacco, (which, when manufactured, there would have been duties imposed upon by the revenue law of the United States,) for the purpose of being sold, or in any way disposed of by him, the said Charles H. Waterman, in fraud of said revenue law of the said United States, or in fraud of any law of the said United States, or with the design to evade the payment of any duties imposed thereon by any law of the United States.

And the said Charles H. Waterman, to the said second article of the said libel of information, doth further allege and propound that it is not true, as in the said second article of the said libel of information is alleged and pleaded, that the said articles of raw materials last above mentioned, or any of them, or any part thereof, have become forfeited to the use or uses specified in any statute of the United States.

And the said Charles H. Waterman, to the said second article of the said libel of information, doth further allege and propound that he, the said Charles H. Waterman, is the owner of the said articles of raw materials last above mentioned, and that no one else is the owner thereof, nor of any of them, nor of any part thereof.

And the said Charles H. Waterman, to the said second article
30 of the said libel of information, doth further allege and propound that it is not true, as in the said second article of the said libel of information is alleged and pleaded, that when the aforesaid seizure of other articles was made as aforesaid, that the one hogshead of leaf tobacco mentioned in the said second article of the said libel of information was, on the fifth day of February, in the year of our Lord eighteen hundred and sixty-six, seized by the said collector, George Schneider.

And the said Charles H. Waterman, to the said second article of the said libel of information, doth further allege and propound that it is true that the said one hogshead of leaf tobacco in the said second article of the said libel of information mentioned, was purchased by him, the said Charles H. Waterman, in the city of Cincinnati, in the State of Ohio, and the same was not placed in the tobacco factory of the said Charles H. Waterman, the place where the other last aforesaid articles were seized as aforesaid, to wit, in the building numbered 22 Market street, in the said city of Chicago, in the said northern district of

Illinois, until on or about the twentieth day of February, in the year of our Lord eighteen hundred and sixty-six, at which time
31 the same was placed in the said tobacco factory building by him, the said Charles H. Waterman.

And the said Charles H. Waterman, to the said second article of the said libel of information, doth further allege and propound that it is not true as in the said second article of the said libel of information is alleged and pleaded, that the said one hogshead of leaf tobacco in the said second article of the said libel of information mentioned was found in the possession of him, the said Charles H. Waterman, at the time of the said seizure of the following articles of raw material, to wit, one half-hogshead of leaf tobacco, one and one-half barrels of liquorice, fifteen hundred pounds of tobacco stems, and twenty-four kegs of the kind of tobacco known as shorts, to wit, on the fifth day of February, in the year of our Lord eighteen hundred and sixty-six.

And the said Charles H. Waterman, to the said second article of the said libel of information, doth further allege and propound that it is true that he, the said Charles H. Waterman, did intend to manufacture the said one hogshead of leaf tobacco in the said second article of the said libel of information mentioned into smoking and other kinds of
32 manufactured tobacco when he purchased the same and when he placed the same, as aforesaid, in the tobacco factory of him, the said Charles H. Waterman, to wit, on the twentieth day of February, in the year of our Lord eighteen hundred and sixty-six; and from that time continuously to the time of the filing of the said libel of information he, the said Charles H. Waterman, did intend to so manufacture the said one hogshead of leaf tobacco.

And the said Charles H. Waterman, to the said second article of the said libel of information, doth further allege and propound that it is not true, as in the said second article of the said libel of information is alleged and pleaded, that, at the time of the said seizure of all of the said articles of property in the said second article of the said libel of information mentioned, other than the said one hogshead of leaf tobacco, being raw material, or at any other time, he, the said Charles H. Waterman, was intending to manufacture the said one hogshead of leaf tobacco, or any part thereof, into smoking tobacco, chewing tobacco, or other kind of manufactured tobacco, for the purpose of being sold or in any way disposed of by him, the said Charles H. Waterman, in fraud of said revenue law of the said United States, or in fraud of any law of
33 the said United States, or with the design to evade the payment of any duties imposed thereon by any law of the said United States.

And the said Charles H. Waterman, to the said second article of the said libel of information, doth further allege and propound that it is not true, as in the said second article of the said libel of information is alleged and pleaded, that the said one hogshead of leaf tobacco, raw material as aforesaid, or any part thereof, has become forfeited to the use or uses specified in any statute of the said United States.

And the said Charles H. Waterman, to the said second article of the said libel of information, doth further allege and propound that he, the said Charles H. Waterman, is the owner of the said one hogshead of leaf tobacco mentioned in the said second article of the said libel of information, and that no one else is the owner thereof, nor of any part thereof.

Third. And the said Charles H. Waterman, to the third article of the said libel of information, doth further allege and propound that it is true, as in the said third article of the said libel of information is alleged and

pleaded, that, at the time of the said seizure, to wit, on the fifth day of February, in the year of our Lord eighteen hundred and sixty-six,
34 at the said city of Chicago, in the said northern district of Illinois, the following tools, implements, instruments, and personal property, to wit, one steam-engine with boiler and shafting, one grindstone, two Rogers' tobacco cutting-machines, two tobacco presses and boxes, three hundred and ninety-nine tin tobacco cans, nine wooden tobacco caddies, nineteen new tobacco kegs, one steam tobacco roller, one lot of tobacco drying-frames, one steam-pipe, one tobacco steam-box, so as aforesaid seized, were found in the building and enclosure, namely, the tobacco factory of him, the said Charles H. Waterman, at No. 22 Market street, in Chicago aforesaid, where the said articles of raw material, to wit, one half-hogshead of leaf tobacco, one and one-half barrels of liquorice, fifteen hundred pounds of tobacco stems, and twenty-four kegs of that kind of tobacco known as shorts, were found at the time and place of the said seizure thereof, as aforesaid.

And the said Charles H. Waterman, to the said third article of the said libel of information, doth further allege and propound that it is not true, as in the said third article of the said libel of information is alleged and pleaded, that the said tools, implements, instruments, and personal property, to wit, one steam-engine with boiler and shafting, one grindstone, two Rogers' tobacco cutting-machines, two tobacco presses
35 and boxes, three hundred and ninety-nine tin tobacco cans, nine wooden tobacco caddies, nineteen new tobacco kegs, one stem tobacco roller, one lot of tobacco drying-frames, one steam-pipe, one tobacco steam-box, or any of the said articles were, at the said time and place of said seizure, or at any other time or place, intended to be used by him, the said Charles H. Waterman, in the fraudulent manufacture of said raw materials last above mentioned, or any of them, or any part thereof, into smoking tobacco or any other kind of manufactured tobacco, for the purpose of being sold by him, the said Charles H. Waterman, in fraud of the said revenue laws, or any law of the said United States, or with design to evade the payment of any duties imposed thereon, or upon any part thereof, by the laws of the said United States, when thus manufactured.

And the said Charles H. Waterman, to the said third article of the said libel of information, doth further allege and propound that it is not true, as in the said third article of the said libel of information is alleged and pleaded, that the steam-engine with boiler and shafting, one grindstone, two Rogers' tobacco cutting-machines, two tobacco presses and boxes, three hundred and ninety-nine tin tobacco cans, nine wooden tobacco-caddies, nineteen new tobacco kegs, one stem tobacco roller,
36 one lot of tobacco drying-frames, one steam-pipe, one tobacco steam-box, last so seized as aforesaid, are, or that any of them is, forfeited to the uses or to any use specified in any statute of the said United States for the cause or causes in the said libel of information alleged and pleaded or otherwise.

And the said Charles H. Waterman, to the said third article of the said libel of information, doth further allege and propound that he, the said Charles H. Waterman, is the owner of the said tools, implements, instruments, and personal property, that is to say, one steam-engine with boiler and shafting, one grindstone, two Rogers' tobacco cutting-machines, two tobacco presses and boxes, three hundred and ninety-nine tin tobacco cans, nine wooden tobacco caddies, nineteen new tobacco kegs, one stem tobacco roller, one lot of tobacco drying-frames, one steam-pipe, and one tobacco steam-box, and that no one else is the owner

thereof, nor hath any one else any interest, right, or claim therein or thereto, except one Matthias Clump of the said city of Chicago, Cook County, and State of Illinois, and he, the said Matthias Clump, hath, to the sum of two thousand dollars, and interest thereon at the rate of ten per centum per annum from the first day of December, in the year of our Lord eighteen hundred and sixty-five, a chattel-mortgage right, claim, and interest in and to that portion of the said articles of
37 personal property known and described as follows, that is to say, one steam-engine and boiler and all the fixtures thereto belonging, also two Rogers' tobacco cutting-machines, and two tobacco presses, and one set of tobacco rollers, and one large grindstone, fourteen racks for drying tobacco and screens for the same, and which said sum of two thousand dollars he, the said Charles H. Waterman, justly owed to the said Matthias Clump on the said first day of December, in the year last aforesaid, and being thus indebted, he, the said Charles H. Waterman, on the day and year last aforesaid made and executed under his seal a mortgage in and by which he, the said Charles H. Waterman, mortgaged to the said Matthias Clump, his heirs, executors, administrators, or assigns the last herein above-described property, and which said mortgage contains a condition or provision that the same shall be void if the said Charles H. Waterman, or his heirs, executors, administrators, or assigns shall well and truly pay or cause to be paid unto the said Matthias Clump, or his heirs, executors, administrators, or assigns a certain promissory note, bearing even date therewith, for two thousand dollars, and due one year from the date thereof, with interest at the rate of ten per cent., and which said promissory note was made and executed
38 by him, the said Charles H. Waterman, and was made payable and delivered to the said Matthias Clump on the said day of the date of the said note and mortgage, and the said mortgage was stamped with internal revenue stamps to the sum of two dollars, and said stamps were cancelled by him, the said Charles H. Waterman, on the day of the date of said mortgage before the delivery thereof, and the said mortgage now remains in full force, in no way paid, satisfied, released, or discharged, and no part of the sum of money mentioned in the said promissory note, either principal or interest has been paid, but remains wholly unpaid, and the said note now remains in full force, in no way released or discharged.

Fourth. And the said Charles H. Waterman doth further allege and propound that all and singular the premises are true as hereinabove set forth. Whereupon the said Charles H. Waterman prays that this honorable court would be pleased to pronounce against the libel of information aforesaid, and that the same be dismissed with costs.

C. H. WATERMAN.

J. H. KNOWLTON,
Proctor.

Subscribed & sworn to before me this 31st day of March, 1866.

E. A. DRUMMOND,
U. S. Com.

39 [5-c'ts rev. stamp, cancelled.]

(Endorsed:) Filed March 31, 1866.

W'M H. BRADLEY, *Clk.*

Claimant's stipulation.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

District court, March term, A. D. 1866.

Whereas a libel of information was filed in this court on the sixth day of March, in the year of our Lord eighteen hundred and sixty-six, by the United States by Perkins Bass, esquire, district attorney for the northern district of Illinois, against 213 Kegs of Tobacco and other property in the said libel of information described for the reasons and causes, and for the purposes in the said libel of information mentioned, and therein it is among other things alleged and pleaded that the said 213 Kegs of Tobacco and other property are forfeited for the reasons and causes therein mentioned.

And whereas also a claim and answer hath been filed in the said cause and to the said libel of information by Charles H. Waterman, as owner of the said property, and the said Charles H. Waterman and Warrick Martin of the city of Chicago, Cook County, and State of Illinois, surety, the parties hereto hereby consenting and agreeing that, in
40 case of default or contumacy on the part of the said claimant or his surety, execution may issue against their goods, chattels, and lands for the sum of two hundred and fifty dollars:

Now, therefore, it is hereby stipulated and agreed for the benefit of whom it may concern that the stipulators undersigned shall be and are bound in the sum of two hundred and fifty dollars, conditioned that the claimant above named shall pay all such costs and expenses as shall be awarded against him, the said Charles H. Waterman, by the final decree of the court or upon appeal by the appellate court.

C. H. WATERMAN.
WARRICK MARTIN.

Taken and acknowledged this day of March, A. D. 1866, before me.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Warrick Martin, party to the above stipulation, being duly sworn, deposes and says that he resides in the northern district of Illinois, and is worth the sum of five hundred dollars over and above all his debts and liabilities.

WARRICK MARTIN.

Subscribed & sworn this 31st day of March, A. D. 1866, before me.
E. A. DRUMMOND,
U. S. Com'r.

41 [5-c'ts rev. stamp, cancelled.]

(Endorsed;) Filed March 31, 1866.

W'M H. BRADLEY, *Clk.*

On this day, to wit, the third day of April, A. D. 1866, came Robert Reid, by Walker & Dexter, his proctors, and filed in said clerk's office his answer in the above entitled cause, which said answer is in the words and figures following, to wit:

Answer of Rob't Reid.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

United States district court for said district.

UNITED STATES OF AMERICA
vs.
CHARLES H. WATERMAN.

To the Hon. Thomas Drummond, judge of the district court for said district:

The answer of Robert Reid, of the city of Chicago, intervening for his interest and the interest of the Chicago agency of the Bank
42 of Montreal, in the goods, chattels, and merchandise mentioned in the libel filed in the cause aforesaid, respectfully showeth:

That this respondent is, and has been for the two years last past, the agent of the Bank of Montreal, and in charge of the agency of said bank in the city of Chicago aforesaid.

That, as such agent, this respondent has been engaged in the transaction of an ordinary banking business, and in discounting mercantile paper.

That, on or about the 13th day of April, 1865, this respondent, as such agent, loaned to one Charles H. Waterman, a tobacco merchant and manufacturer of said city, the sum of two thousand dollars, on the said Waterman's promissory note of that date; that said Waterman, at that time, delivered to your respondent as security for the payment of the said note, a warehouse receipt in words and figures following, that is to say:

"CHICAGO, 13*th April*, 1865.

"Received in store, at my manufactory No. 22 Market street, in good order, one hundred barrels stem smoking tobacco, and fifty barrels mixed smoking tobacco, averaging seventy-five lbs. per barrel, which I hold subject to the order of Robert Reid, agent, deliverable free of all charges on return of this receipt."

"C. H. WATERMAN."

43 [40-cent revenue stamp, cancelled.]

Which said receipt was duly stamped, and is now here offered for the inspection of your honor.

And this respondent further states that said Waterman, at the time he deposited said warehouse receipt with the respondent as security for the payment of said note as aforesaid, stated to this respondent that the tobacco named in said receipt was in the possession of said Waterman, and in store at his manufactory, No. 22 Market street, in the city of Chicago; and this respondent accepted said receipt as security for the payment of said note with the distinct understanding that the tobacco named in said receipt was to be retained by said Waterman to secure the payment of said note, or, if sold, that the proceeds should be applied to the payment of the same.

This respondent further states that, subsequently, and at different times the said note was renewed and new notes, duly stamped, given in

place thereof; that the last note so given bears date Dec. 21st, 1865, is duly stamped, and is now wholly due and unpaid.

44 And this respondent further states that the said warehouse receipt is now and has at all times remained in the possession of this respondent.

And this respondent further states that, on or about the 3rd day of November, 1865, your respondent, as agent as aforesaid, loaned to said Charles H. Waterman, a further sum of money, to wit, five thousand dollars on his promissory note of that date; that said Waterman, at that time or shortly thereafter, delivered to the respondent as security for the payment of said note, a warehouse receipt in the words and figures following, that is to say:

"CHICAGO, 3 *Nov.*, 1865.

"Received in store at No. 22 Market street, Chicago, one hundred and fifty barrels of fine cut chewing tobacco, which I hold subject to the order of R. Reid, agent herein, deliverable free of charges on return of this receipt.

"C. H. WATERMAN."

[60-c't rev. stamp, cancelled.]

Which said receipt was duly stamped, and is now here offered for the inspection of your honor.

And this respondent further states that subsequently and at different times the said note was renewed, and new notes duly stamped

45 were given in place of the same, the last note so given bearing date January 15, 1866, and being duly stamped, as by law required, and given for the sum of five thousand and sixteen $\frac{40}{100}$ dollars; that fifteen hundred dollars of the sum of money in said last-mentioned note specified, has been paid, but the remainder of said sum, to wit, the sum of three thousand five hundred and sixteen $\frac{40}{100}$ dollars, is now wholly due and unpaid.

And this respondent further states that, the said warehouse receipt is now and has at all times remained in the possession of your respondent as security for the payment of the note last aforesaid, and the renewals thereof.

And this respondent further states that, on or about the 28th day of November, 1865, this respondent loaned, as such agent as aforesaid, to said Charles H. Waterman the further sum of five thousand (5,000) dollars, on his promissory note of that date; that said Waterman, at that time or shortly thereafter, delivered to your respondent as security for the payment of the said note, a warehouse receipt in the words and figures following, that is to say:

"CHICAGO, 28 *Nov.*, 1865.

"Received in store, at No. 22 Market street, from Warrick

46 Martin, esq., one hundred and fifty barrels fine-cut chewing tobacco, which I hold subject to his order hereon, deliverable free of all charges on return of this receipt.

"C. H. WATERMAN."

[60-c't rev. stamp, cancelled.]

Which said receipt, duly stamped, was then and there, & at the time the same was made, indorsed by the said Warrick Martin in blank, and

delivered by him to this respondent, and which receipt is here offered for the inspection of the court.

And your respondent further states that, subsequently, and at different times, the said note was renewed and new notes, duly stamped, given in place of the same, the last note for the like sum, to wit, five thousand dollars, bearing date 29th Jan'y, 1866, and which said last-mentioned note is now wholly due and unpaid.

And this respondent further states that the said warehouse receipt is now, and has at all times remained, in the possession of this respondent as security for the payment of the said note and the renewals thereof as aforesaid.

This respondent further states that the warehouse of said Waterman, known as No. 22 Market street, in the city of Chicago, and the
47 chattels, goods, and merchandise therein contained, have been seized by the revenue officers of the United States Government for the district wherein the said warehouse or manufactory was located for alleged violation of the revenue laws of the United States by the said Waterman, and that the tobacco, or a part thereof, so as aforesaid held by the said Waterman to the order of and as security for the monies due as aforesaid to your respondent has been seized, and is now in the possession and under the control of the revenue officers aforesaid.

And this respondent further states that he has not been at any time, nor is he now cognizant of any fraud or fraudulent intent against the revenue or other laws of the United States by or on the part of said Waterman, nor has this respondent for himself, or as agent for said bank, been guilty of any fraud or fraudulent intent in the matter, but has acted in good faith and sincerity.

Your respondent would, therefore, pray that the merchandise, so as aforesaid specified in the above-mentioned warehouse receipts,
48 which were received, and are now held in good faith by your respondent as security for the payment of the notes aforesaid, may be delivered up to your respondent, as your respondent has a valid lien upon the same for the advances so made as aforesaid; and your respondent avers that he is ready and willing, and now here offers to pay any sums that may be due and payable as revenue, or the taxes to the United States Government on the said tobacco in said receipts mentioned, or any part or parcel of the same, for the manufacturing thereof.

ROBERT REID.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Robert Reid, of said district, being first duly sworn, deposes and says that he has read the foregoing answer, and knows the contents
49 thereof, and that the matters and things therein stated are true in substance and in fact.

ROBERT REID.

Subscribed and sworn to before me this 3rd day of April A. D. 1866.
[SEAL.] WILLIAM F. WHITEHOUSE,
Notary Public.

[5 cts. rev. stamp cancelled.]

(Endorsed:) Filed April 3rd, 1866. W'm H. Bradley, cl'k.

Stipulation for costs.

On this day, to wit, the tenth day of April, A. D. 1866, claimant's stipulation in the above cause was filed by the Bank of Montreal, in the clerk's office of said court, in the above entitled cause, and is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

District court, March term, A. D. 1866.

50 Whereas a libel was filed in this court on the sixth day of March, A. D. 1866, by the United States of America, against Two Hundred and Thirteen Kegs of Fine-cut Chewing Tobacco, &c., for the reasons and causes in the said libel mentioned; and whereas a claim and answer has been filed in the said cause by the Bank of Montreal, and the said Bank of Montreal and William H. Park, surety, the parties hereto hereby consenting and agreeing that in case of default or contumacy on the part of the claimant or his surety, execution may issue against their goods, chattels, and lands for the sum of two hundred and fifty dollars, conditioned that the claimant above named shall pay all such costs as shall be awarded against it by this court, or, in case of appeal, by the appellate court.

BANK OF MONTREAL,
By WALKER & DEXTER,
Proctors.

W. H. PARK.

Taken and acknowledged this 10th day of April, A. D. 1866, before me.
[SEAL] WILLIAM F. WHITEHOUSE,
Notary Public.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

William H. Park, party to the above stipulation, being duly sworn, deposes and says that he resides in the northern district of Illinois, and is worth the sum of five hundred dollars over and above all his debts and liabilities.

W. H. PARK.

51 Sworn this 10th day of April, A. D. 1866, before me.
[SEAL.] WILLIAM F. WHITEHOUSE,
Notary Public.

(Endorsed:) Filed April 10th, A. D. 1866. W'm H. Bradley, clerk.

On this day, to wit, the sixth day of April, 1866, came Charles H. Waterman, by Knowlton, his attorney, and filed in said clerk's office a motion for order to deliver up account books, which said motion is in the words and figures following:

Motion of Waterman.

To the Hon. Thomas Drummond, judge of the district court of the United States for the northern district of Illinois:

And now comes Charles H. Waterman, by his attorney, J. H. Knowlton, and moves this hon. court to grant an order upon Perkins Bass, esquire, an att'y of this court, requiring him to show cause at the opening of court to-morrow morning, or as soon thereafter as counsel can be heard, why, and by what authority, he placed in this court the private account books of the said C. H. Waterman, and that he also then and there show cause why an order of this court should not
52 be made and entered directing that said account books be delivered up to said Waterman.

J. H. KNOWLTON,
Att'y for Waterman.

APRIL 6, 1866.

(Endorsed:) Filed April 5th, 1866, W'm H. Bradley, cl'k.

On this day, to wit, the fifth day of July, in the July term, A. D. 1867, of said court, in the record of the proceedings thereof in the above-entitled cause, is the following entry, to wit:

Order reference to P. A. Hoyne.

THE UNITED STATES
vs.
TWO HUNDRED AND THIRTEEN KEGS FINE-CUT Chewing Tobacco, &c. } Information.

By agreement of the parties by their proctors, it is ordered by the court that it by referred to P. A. Hoyne, esq., as commissioner to take proofs herein.

On this day, to wit, the fourteenth day of November, in the October term, A. D. 1867, of said court, in the record of the proceedings thereof in the above-entitled cause, is the following entry, to wit:

53 *Order setting for hearing.*

THE UNITED STATES
vs.
213 KEGS FINE-CUT CHEWING TOBACCO. } Information.

Now come the parties, by their respective counsel, and, by agreement, this cause is set down for hearing on the pleadings and proofs filed; a jury is waived and the matter is submitted to the court; and, after hear- the evidence, (arguments being waived,) the court takes this case under advisement.

On this day, to wit, the seventeenth day of December, A. D. 1867, came Jesse O. Norton, dist. att'y for northern district of Illinois, and filed in said clerk's office a motion for the sale of property, which said motion is in the words and figures following, to wit:

Motion for sale of property.

UNITED STATES DISTRICT COURT,
Northern District of Illinois, ss:

THE UNITED STATES OF AMERICA
vs.
213 KEGS FINE-CUT CHEWING TOBACCO, &C.

To the Hon. Thomas Drummond, judge of the United States for the northern district of Illinois:

The petition of Jesse D. Norton, the attorney of the United States
54 for said northern district of Illinois, respectfully shows that, by virtue of process issued from the district court of the United States for said district in the above case, there is now in the custody of the marshal of the United States for said district the following described property, viz:

One steam engine with boiler & shafting, one grindstone, 2 Rogers' tobacco cutting-machines, 2 tobacco presses and boxes, 399 tin tobacco cans, 9 wooden tobacco caddies, 19 new tobacco kegs, one stem tobacco roller, one lot tobacco drying-frames, one steam-pipe, one tobacco steam-box.

And your petitioner further shows that the said property is in a perishable condition, so as in the opinion of your petitioner to require an immediate sale thereof. Your petitioner therefore prays your honor to order the same to be sold & the proceeds thereof to be paid into the said court to abide the definite decree & order of the said court.

J. O. NORTON,
U. S. Att'y Nor. Dis't Ill's.

(Endorsed:) Filed Dec'b. 17th, 1867. W'm H. Bradley, cl'k.

On this day, to wit, the seventeenth day of December, in the December term, A. D. 1867, of said court, in the record of the
55 proceedings thereof in the above-entitled cause, is the following entry, to wit:

Order to sell.

THE UNITED STATES
vs.
213 KEGS FINE-CUT CHEWING TOBACCO, &C. } Information.

Now comes the district attorney, who files his petition for the sale (as perishable property) of the following goods and other property in custody under process herein, to wit, one steam engine with boiler and shafting, one grindstone, 2 Rogers' tobacco cutting-machines, 2 tobacco presses & boxes, 399 tin tobacoo cans, 9 wooden tobacco caddies, 19 new tobacco kegs, one steam tobacco roller, one lot of tobacco drying-frames, one steam-pipe, one tobacco steam-box; and the claimant and all parties in interest consenting to such sale, it is thereupon ordered by the court that said steam engine with boiler and shafting, one grindstone, 2 Rogers' tobacco cutting-machines, two tobacco presses and boxes, three hundred and ninety-nine tin tobacco cans, nine wooden tobacco caddies, nineteen new tobacco kegs, one stem tobacco roller, one lot of tobacco drying-frames, one steam-pipe, and one tobacco

steam-box, siezed and in custody as aforesaid be sold by the
56 marshal, upon giving at least twenty days' notice, by publication
in the , of said sale, and that he thereupon pay the
proceeds of such sale into court.

On this day, to wit, the eighteenth day of June, in the May term, A. D. 1868, of said court, in the record of the proceedings thereof in the above-entitled cause, is the following entry, to wit:

Order.

THE UNITED STATES
vs.
TWO HUNDRED AND THIRTEEN KEGS OF FINE-cut Chewing Tobacco, and other property. } Information.

Now comes the district attorney, and now comes, also, Charles H. Waterman, claimant of the property herein seized, by J. H. Knowlton, esq., his attorney, and upon issues joined thereupon come eleven jurors, good and lawful men, to wit, George D. Wood, James V. Gale, H. M. Boggess, Bernard Healy, Isaac S. Mitchell, Guy Adams, J. H. Rogers, Thomas H. Foster, John L. Hancock, W. J. Ralph and C. S. Hough, who were all duly elected, tried, and sworn well and truly to try said issue; and, by agreement of the parties, by their attorneys, the trial to proceed with the eleven jurors, their verdict to have the same force and effect as though rendered by a full panel; and, after hearing a part of
the evidence, the hour of adjournment having arrived, the further
57 trial of the cause is postponed until to-morrow morning.

On this day, to wit, the nineteenth day of June, in the May term, A. D. 1868, of said court, in the record of the proceedings thereof in the above-entitled cause, is the following entry, to wit:

Order.

THE UNITED STATES
vs.
TWO HUNDRED AND THIRTEEN KEGS OF FINE-cut Chewing Tobacco, & other property. } Information.

Now come again the parties, by their attorneys, and now come, also, the eleven jurors in this behalf empannelled and sworn; and, after hearing the concluding evidence, the arguments of counsel, and receiving the instructions of the court, the jurors retire to consider of their verdict; and, by agreement of the parties, by their attorneys, the jurors, when they shall have agreed upon a verdict, may sign and seal the same, and deliver it to the clerk, and disperse.

On this day, to wit, the twentieth day of June, in the May term, A. D. 1868, of said court, in the record of the proceedings thereof in the above-entitled cause, is the following entry, to wit:

58 *Order.*

THE UNITED STATES
vs.
TWO HUNDRED AND THIRTEEN KEGS OF FINE-cut Chewing Tobacco, and other property. } Information.

The jury heretofore in this behalf empannelled and sworn, this day

returned into court and reported that they had been unable to agree upon a verdict; and, by agreement of the parties, by their attorneys, the jury are discharged from the further consideration of the cause.

On this day, to wit, the thirteenth day of January, A. D. 1869, in December term, A. D. 1868, of said court, in the record of the proceedings thereof in the above-entitled cause, is the following entry, to wit:

Order.

THE UNITED STATES
vs.
TWO HUNDRED AND THIRTEEN KEGS OF FINE-cut Chewing Tobacco, and other property. } Information.

Now comes the district attorney, and now comes, also, Charles H. Waterman, claimant of the property herein seized, by his attorney, and, upon issue joined thereupon come twelve jurors, good and lawful
59 men, to wit, Caleb Morgan, H. T. Rager, Malcom T. Wisner, George Huoy, John G. Ewer, Albert C. Dart, Joel Ragland, Filmore Weighy, William T. Tucker, Oliver Wagner; James L. Kelly, and James McKay, who were all duly elected, tried, and sworn, well and truly to try said issue; and, after hearing a part of the evidence, the hour of adjournment having arrived, the further trial of the cause is postponed until to-morrow morning:

On this day, to wit, the fourteenth day of January, A. D. 1869, in the December term, A. D. 1868, of said court, in the record of the proceedings thereof in the above-entitled cause, is the following entry, to wit:

Order.

THE UNITED STATES
vs
TWO HUNDRED AND THIRTEEN KEGS OF FINE-cut Chewing Tobacco, and other property. } Information.

Now come again the parties, by their attorneys, and now come, also, the jury in this behalf empannelled and sworn; and, after hearing the evidence and the arguments of counsel, the hour of adjournment having arrived, the instructions to the jury are postponed until to-morrow morning.

60 On this day, to wit, the fifteenth day of January, A. D. 1869, in the December term, A. D. 1868, of said court, in the record of the proceedings thereof in the above-entitled cause, is the following entry, to wit:

Order.

THE UNITED STATES
vs.
TWO HUNDRED AND THIRTEEN KEGS OF FINE-cut Chewing Tobacco, and other property. } Information.

Now come again the parties, by their attorneys, and now come, also, the jury in this behalf empannelled and sworn; and, after receiving the

instructions of the court, the jury retire to consider of their verdict; and, by agreement of the parties, by their attorneys, the jurors, when they shall have agreed upon a verdict, may sign and seal the same, and deliver it to the clerk, and disperse.

On this day, to wit, the sixteenth day of January, A. D. 1869, in the December term, A. D. 1868, of said court, in the record of the proceedings thereof in the above-entitled cause, is the following entry, to wit:

Order.

THE UNITED STATES
vs.
TWO HUNDRED AND THIRTEEN KEGS OF FINE-cut Chewing Tobacco, and other property. } Information.

61 The jury heretofore in this behalf empannelled and sworn, this day returned into court the following verdict, to wit, "We, the jury find for the United States." Thereupon the claimant, by his attorney, moves the court for a new trial herein.

On this day, to wit, the eighteenth day of February, A. D. 1869, in the December term, A. D. 1868, of said court, in the record of the proceedings thereof in the above-entitled cause, is the following entry, to wit:

Order.

THE UNITED STATES
vs.
TWO HUNDRED AND THIRTEEN KEGS OF FINE-cut Chewing Tobacco, and other property. } Information.

Now come the district attorney, and the claimant, by his proctors, and now comes on to be heard the motion heretofore entered for a new trial herein; and, after hearing the arguments of counsel, the court takes the same under advisement.

On this day, to wit, the third day of July, in the May term, A. D. 1869, of said court, in the record of the proceedings thereof in the
62 above-entitled cause, is the following entry, to wit:

Order.—Judgment.

THE UNITED STATES
vs.
TWO HUNDRED AND THIRTEEN KEGS OF FINE-cut Chewing Tobacco, and other property. } Information.

The court having considered, and being now fully advised upon the motion of the claimant heretofore entered herein for a new trial of this cause, overrules the same. It is thereupon considered by the court that the goods and property seized by virtue of the process herein be forfeited to the United States, and the same having been sold as perishable property, and the proceeds thereof, amounting to the sum of two thousand nine hundred dollars & ninety-one cents, having been paid into court, it is thereupon ordered, on motion of the district attorney for distribution

of the same, that it be referred to the clerk of the court to ascertain the costs, charges, commissions, disbursements, and claims herein, and that he report with all convenient speed.

63 On the trial of said cause, the following exceptions were taken and were allowed by the court and made of record, and are in the words and figures following, to wit:

Bill of exceptions.

UNITED STATES OF AMERICA:

District court of the United States for the northern district of Illinois.

THE UNITED STATES
vs.
213 KEGS OF TOBACCO, &C.

Afterwards, to wit, at a district court held at the United States court-room, in the city of Chicago, in the county of Cook, and State of Illinois, on the day of in the year of our Lord eighteen hundred and sixty- before Thomas Drummond, esquire, district judge of the United States for the northern district of Illinois, appointed to hold the said court, according to the act of Congress in such case made and provided, the aforesaid issues came on to be tried by a jury of said district, for that purpose duly empannelled, good and lawful men of the said district and of which mention is within made: At which day, to
64 wit, on the thirteenth day of January, in the year of our Lord eighteen hundred and sixty-nine, came then as well the said The United States, by Jesse O. Norton, district attorney of the northern district of Illinois, as Charles H. Waterman, one of the claimants of the property mentioned in the pleadings in this case, by his proctor, J. H. Knowlton, and advocate, George C. Bates, and the jurors of the jury aforesaid empannelled to try the said issues, being called, also came, and were then and there in due manner choses and sworn to try the said issues. The United States aforesaid, by the aforesaid Jesse O. Norton, district attorney, to maintain and prove the said issues on the part and behalf of the United States aforesaid, gave in evidence and read to the jury the books of the defendant and the deposition of C. R. Field, except the parts included in parenthesis, marked "not evidence," which were excluded on objection thereto made by the said Charles H. Waterman, and which deposition was and is as follows, that is to say:

Deposition of C. R. Field.

Deposition of C. R. FIELD, taken August 22nd, 1867, at Chicago, Ill's, before P. A. Hoyne, U. S. commissioner.

Int. 1. What is your name, age, residence, and occupation?
65 My name is C. R. Field; my age, 31 years; I reside in the city of Chicago, county of Cook, and State of Illinois; I am cashier for the First National Bank, Chicago; I have been chief clerk in the assessor's office from Sept., 1862, to September, 1866. I was chief clerk about three and ½ years (3½). I know Charles H. Waterman of this city; I had occasion while in the assessor's office to examine into charges of fraud against said Waterman; I think it was sometime during the year 1866. There was an examination made at the office of Peter Page, the

U. S. assessor, of the charges; it was in consequence of that examination that the tobacco was seized—an information was filed I think by the assessor; I think it was in writing as their informations were generally filed in writing. A request was made by the assessor to the collector to seize the property, &c., of Mr. Waterman's store. I do not recollect whether this request was in writing or oral. I was present when Mr. Snyder, the collector, made the seizure. The assessor, Mr. Snyder, and myself were present.

Question. What were the circumstances which led Peter Page, the assessor, to make an examination into the correctness of the returns of said Charles H. Waterman as a tobacco manufacturer?

(Objected to by counsel for Waterman.)

66 (Answer. Mr. Gage, a former partner of Mr. Waterman's, was examined before the assessor, and testified under oath that Mr. Waterman had defrauded the Government in his returns, and stated particular instances where the fraud could be discovered on his books; and also that the inspector of tobacco, Mr. Quinlan, was in collusion with him, and covered up the shortage of his returns in his reports of the inspection to the assessor and collector.)

Not evidence.

(When the witness commenced stating what Mr. Gage testified, the counsel for Mr. Waterman objected to the witness stating what Gage testified, on the ground that it was not competent testimony.)

I subsequently examined Mr. Waterman's books as follows: the day-book, ledger, cash-book, petty-cash or memorandum book; also, a book that he called his Detroit ledger. (The ledger, day-book, and petty-cash or memorandum book, are here introduced and shown to witness.) These are some of the books I examined at the *the* time I drew up a statement of the result of my examination of Mr. Waterman's books.

(Here a statement is shown to witness, and says that this is the statement and marked "Exhibit A," and made a part of this deposition.)

67 (The counsel for Mr. Waterman objects to the witness stating that this is the statement, on the ground of its being immaterial, and also objects to the exhibit being made a part of the deposition, on the ground that it is incompetent.)

Question. Have you recently, and, if so, how recently, examined the books of account of Mr. Waterman, and compared them with the statement marked "Exhibit A;" and, if so, what was the result of that examination and comparison?

(Question objected to on the ground that it was not competent for the witness to testify as to the results of his examination.)

Answer. I have within a week past examined the books of Mr. Waterman, and found them to compare, as far as I have examined them, and agree with the "Exhibit A."

Question. At the time you first examined Mr. Waterman's accounts, during what months, if any, were his returns of sales of tobacco manufactured by him found to be incorrect; what was the shortage for each month, if any; and what was the total amount of such shortage?

(Question objected to by counsel for Waterman, on the ground that it is not competent under the allegations of the libel of information to make proof of the facts to be elicited by the question.)

68 Answer. In February 1864, I found a shortage of 8,956 pounds of smoking tobacco; in April, 1864, 17,055 pounds smoking tobacco; May, 1864, 13,200 pounds smoking tobacco; July, 1864, 560 pounds fine-cut chewing tobacco, 2,100 pounds leaf smoking tobacco, 14,425 pounds stem smoking tobacco; August, 1864, 1,040 pounds fine-

cut chewing tobacco, 525 pounds leaf smoking tobacco, 5,400 leaf smoking tobacco. The total amount of shortage is 63,261 pounds.

Question. What would be the amount of the tax due the Government on the manufactured tobacco sold by Mr. Waterman, which he had failed to return, as stated in your last answer?

(Objected to by counsel for Waterman, on the ground that it seeks to prove a matter of law, and not of fact.)

The tax would $6,140 55.)

Question. Are these the monthly returns made by Mr. Waterman to the assessor of this district, for the months of February, April, May, July, and August, A. D. 1864?

The returns are here shown the witness and marked Exhibits "B," "C," "D," "E," and "F."

69 (Objected to by counsel for Waterman.)

Answer. They are the returns made by Waterman and his book-keeper, Mr. Dunning.

Question. Did you find any alterations or erasures or any marks of concealment in Mr. Waterman's books of account? If so, please to turn to those books of account, and describe particularly, in reference to book, page, and entry, what you so found.

I did find alterations in the day-book and ledger of Mr. Watermans: First, in the day-book, page 17, under date Feb. 5, 1864, "Tobacco ac. was credited originally by 100 barrels stem smoking tobacco sold, and the same has been altered to 11 barrels, and the erasure or alteration extends to the ledger on page 11. The alteration covers the barrels of tobacco, the alteration of the number of packages, and the total of same; the price, or extension, has also been altered, making a discrepancy occasioned by this alteration, 6,675 pounds of tobacco. I find under April 12, 1864, on page 39 day-book, tobacco ac. was originally credited by a sale of 3,750 pounds tobacco, at 17c.; by 3,715 pounds at 15c.,

70 amounting respectively to $637 50 and $562 50; and, also, 100 packages at 35c.; in the aggregate, $1,235 00; and that the sale was made to Joseph Pollock; and that the same has been altered on the day-book to 375 at 17c., total, $63 75; 375 at 15c. total, $56 25; and to 10 packages, 35c., total, $3 50—total, $123 50; and that the alteration in the amount for the same, extends to the ledger, on page 11, under date of April 12th, 1864. Shortage on this operation, 6,750 pounds. I find, under date of April 20, 1864, on day-book, page 43, tobacco was originally credited by 50 barrels "Star No. 3," at 17c., $637 50; 50 barrels "Star No. 2," at 18c., $675; 50 barrels "Star No. 1," a 20c., $750—total, $2,062 50. The alteration, as made on day-book, reads 5 barrels "Star No. 1," *a* 20c., $75 00; 5 barrels Star No. 2, 18c., $67 50; 5 barrels Star No. 3, *a* 17c., $63 75; and, added to the same, without alteration, is 15 barrels, *a* 30c., $4 50—making a total of $210 75. On examination, I found that this sale was made to Mr. Shufeldt, under date of April 16, 1864, or so dated in bill. The alterations extend also to the ledger, page 11, under date April 20, in the total amount of the same. The shortage on this alteration, 135 *ballrs*, or 10,125 pounds. May, 1864, there was reported as sold by Mr.

71 Waterman, in that month, 2,700 pounds smoking tobacco. I found sales during that month as follows: 88 barrels stem smoking, 6,600 pounds, sold under date May 24, 1864, to George W. King & Co.; 54 barrels, 4,050 pounds, stem smoking tobacco, sold to same firm under same date; 5 barrels smoking tobacco, 375 pounds, sold to L. Barber & Sons, May 9, 1864; 25 barrels, 1,875 pounds, smoking tobacco, sold to S. L. Barrett & Co., May 20th, 1864—total shortage,

13,200 pounds. No regular entries made of these sales on the books, but irregular entries in the cash-book; and otherwise I found in what is called a petty cash-book, entries or receipts for manufactured tobacco delivered to various parties, and which I found was sold to them, and of which no regular entries had been made in the day-book or ledger, the regular books of the concern at this time.

(The book is here exhibited and shown to the witness.)

In July, 1864, I find the following sales not entered on the regular book: 26 barrels, 1,950 pounds leaf smoking tobacco, sold to G. W. King & Co., July 20, 1864; 100 barrels, 7,500 pounds, stem smoking tobacco, sold to Pollard and Doane, July 22, 1864; 20 barrels stem smoking tobacco 1,490 pounds, sold to S. L. Barrett & Co., July 2, 1864; 100
72 barrels, 7,500 pounds, stem smoking tobacco, sold to Joseph Pollock, July 26, 1864; 5 barrels stem smoking tobacco, 375 pounds, sold to L. Barber & Sons, July 27, 1864. August, 1864: 50 barrels 3,750 pounds, stem smoking tobacco, sold to Hibben & Co.; Aug. 19 and 22, 1864, I also find, in addition to these amounts mentioned, shortages on the various kinds of tobacco sold by him during the months in which shortages are mentioned of nominal amounts.

Question. At the time of the seizure of Mr. Waterman's establishment by the collector, in what condition did you find the tobacco manufactured by Mr. Waterman then on hand? I wish to know particularly as to the age of the tobacco, the packages, if any, in which it was found, and the marks, if any, upon such packages.

I found a great many old packages that bore the inspection mark of from one to two years date in age, in which was fresh manufactured tobacco. I should say from memory that not less than one-third of the packages on hand were old packages, and when any inspection-
73 mark was on, they were of old date.

Question. What deficiency, if any, was there in Mr. Waterman's returns from Nov., 1864, to Feb'y, 1866?

They were from one hundred pounds to seven hundred pounds each month short—mostly on stem and leaf smoking tobacco.

Cross-examination:

How do you know that Mr. Waterman's returns were short from one hundred to seven hundred pounds per month from November, 1864, to February, 1866?

From examination of his books covering those periods.

Question. Upon what pages in those books will those entries be found which show this shortage which you speak of?

This is occasioned by a deduction made by Messrs. Waterman & Co., of all tobacco returned to them from the month's sales, in which the same may have been returned, also by selling what is termed as
74 mixed smoking and returning the same as stem smoking. I cannot state the exact pages.

Question. Can you state any of the pages?

No, sir.

Question. How do you know he returned leaf as stem, or one kind of tobacco for another?

I found sales on his books of one grade of tobacco was returned for another grade in the same month.

Question. Upon what page or pages of the books are those entries to be found?

On the pages of the day-book covered by the period between November, 1864, and February, 1866.

Question. Do you mean that such entries are to be found upon every page during that period?

No, sir.

Question. Then upon what particular pages are those entries to be found?

75 I cannot state without an examination.

Question. Examine the books, and tell upon what page or pages.

I should have to go through a close examination which I have not time to do here.

Question. At the time this tobacco of Mr. Waterman's was seized, who was present besides yourself, Mr. Snyder, & Mr. Page?

I could not state positively that there was any one; there might have been, but I could not state who; I remember their being there.

Question. Don't you know the fact that Mr. Waterman, Mr. Kundson, his book-keeper, Mr. Ward, ass't collector, and another or others—one quite a tall man—were present on that occasion?

My impression is that Mr. Waterman and his book-keeper were present. I cannot state positively that they were, and I think Fred. Becker was present; he was taken there as keeper.

Question. On that occasion is it not a fact that a considerable

76 quantity of tobacco was spread out upon the floor for the purpose of drying or for some other purpose?

There was.

Question. Was it not explained on that occasion that some tobacco which had commenced to be injured, and which had been worked over some time before that, and that the whole, or some part of it, had been put in these kegs, which, you say, had old inspection marks on them, or into new kegs; and which, and how much of either?

(Question objected to by dis'ct attorney.)

Answer. Not to my recollection. I will further state all I remember of any explanation was that the tobacco loose on the floor was not dry or ready for the packages.

Question. How do you know that that tobacco which you designate as old tobacco had not been recently manufactured?

I do not know where I have designated any as old tobacco.

Question. How do you know that any of the tobacco of which you say you found entries in the petty cash-book was tobacco which

77 had been manufactured by Mr. Waterman?

I could find no entries on his books, or Mr. Waterman could furnish the assessor's office no information that he had purchased this tobacco in a manufactured state.

Question. Do you mean to say that Mr. Waterman could not furnish, or did not furnish?

I mean to say that he did not, although he was repeatedly requested so to do.

Question. Who made those requests, and when were they made?

Myself, after the seizure, during the examination of the books.

Question. How long after the seizure was this request made?

I could not state the day, nor the hour, nor the week, but it was during the examination.

Question. Were those requests that you made of Mr. Waterman in writing, or verbal?

78 They were verbal.

Question. What were the words you used in making those requests, or *or* any of them?

To this effect, that we had found shortages in his returns; if he had any expla'tions to make of them in the way of selling tobacco manufactured by others, to let us have it.

Question. How often did you make such requests, and where was Mr. Waterman when you made them, or any of them?

I cannot state how often, but think more than once in the assessor's office.

Question. Who was present when you made such requests of Mr. Waterman in yours and his hearing?

I think the assessor, Peter Page, was.

Question. Was any body else present?

I cannot state whether any one else was present.

Question. Are you positive that Peter Page was present?

79 I think he was. I could not state that he was or was not; my impression is that he was.

Question. You say that on page 17 of the day-book that there was an erasure of the nnmber of barrels of tobacco originally put down or another number substituted therefor. How do you know what the original number, as put down, was?

From a close examination of it.

Question. Do you know what was the cause of the change of which you speak, and what was the actual amount of tobacco sold and retained by the purchaser, as to which these entries are made?

I do not know any other cause than to show a less amount sold than there really was. I do not conduct Mr. Waterman's business, and I could not tell what his ideas were about it.

Question. You testify as to similar original entries, erasures, and substitutions of other figures, and less quantities found, on pages 39 and 43 of the day-book. Have you any further knowledge as to the facts connected with those entries, and such as you have stated of the

80 entries on page 17?

I have.

Question. What is that other knowledge?

I have found the purchasers of the tobacco, the amount they purchased, and what they paid for it; and, in some cases, Mr. Waterman's bill of the same, from which I gained the amounts and values, as heretofore stated.

Question. Which before stated amounts and values do you mean?

The larger.

Question. Who were the persons with whom you found those bills of Mr. Waterman's?

Mr. Shufeldt for one, (I think Geo. A. Shufeldt.) Joseph Pollock had not the original bill, but I got the amounts through him. I will state that this is the only bill which relate to the erasures.

Question. Who are the persons from whom you got this information with whom you did not find Mr. Waterman's bills?

81 Answer. Mr. Ward, dep't collector, received from Mr. Joseph Pollock a statement of the purchases of manufactured tobacco; purchases made by him from Mr. Waterman.

Question. You then got no direct information from Mr. Pollock himself?

I did not; I do not know the man.

C. R. FIELD.

Exhibit "A."—Statement collector & assessor in the case of C. H. Waterman & Co., 27 Market st.

CHICAGO, *Ill., Feb'y* 20, 1866.

June, 1863. 3981½ lb. smoking tobacco short, found on regular sale book.

July, 1863. 1,500 lb. smoking tobacco short.

Aug. & Sept., 1863. 1,492½ lb.

Oct. & Nov., " Substantially correct.

Dec., " 415 lb. smok. tobacco short.

Jan'y, 1864. Correct.

Feb'y, " 8,956 smok. tobacco short. 2,281 lb. of this shortage found on regular entried sales; a further shortage of 6,675 lb. occasioned by an alteration of an entry on their books, under date of Feb'y 4, '64, of 100 bbl. smok. tobacco sold, to 11 barrels. The alteration extends to the ledger also, and is very plain.

82

Page 17, D. B.

P'ge 11, ledger.

March, 1864. Correct.

April, 1864. 17,055 lb. smok. tobacco, short, occasioned as follows: 100 barrels sold to Jos. Pollock, altered on books to 10 bbl; alteration easily perceived on day-book & ledger. Shortage on this sale, 6,750 lb.; 150 bbl. smoking tobacco, sold to Geo. Shufeldt, Ap'l 16, '64, altered on day-book & ledger to 15 bbl. Shortage, 16,125 lb.

D. B., page 39.

Ledger, " 11.

P'ge D. B., 43.

Ledger, 11.

May, 1864. 13,200 lb. smok. tobacco, short, only 2,700 lb., reported as sold in the month. Sales of 15,900 lb. found, sold as follows: 88 bbl., 6,600 lb. stem, smoking, sold to Geo. W. King & Co., May 24, '64; 54 bbls., 4,050 lb., stem smoking, sold to same firm under same date; 5 bbl. smok. tobacco sold, 375 lb., sold to L. Barber & Son, May 9, '64; 25 barrels, 1,875 lb., s. tobacco sold to S. L. Barrett & Co., May 20, 1864. No regular entries of these sales are made on the books, but irregular entries in the cash-book & otherwise.

83

June, 1864. 595 lb. smok. tobacco, short.

July, 1864. 560 lb. fine-cut chewing tobacco, short.

2,100 lb. leaf smoking " "

14,425 lb. stem " " " occasioned as follows: 26 bbl., 1,950 lb., leaf smoking, sold to G. W. King & Co., July 20, 1864; 100 bbl., 7,500 lb. stem smoking tobacco, sold to Pollard & Doane, July 22, '64; 20 bbl. stem smoking tobacco, 1,490 lb., sold to S. L. Barrett & Co., July 2, '64; 100 bbl., 7,500 lb., stem smoking tobacco, sold to Jos. Pollok, July 26, '64; 5 bbl., 375 lb., stem smoking tobacco, sold July 27, '64, to L. Barber & Son.

Aug., 1864. 1,040 lb. fine-cut chewing, short.

525 lb. leaf smoking tobacco, "

5,400 lb. stem smoking " " occasioned as follows: 50 bbls., 3,750 lb., stem smoking tobacco, sold to Hibben & Co., Aug. 19 & 22, '64.

Sept., 1864. 1,125 lb. stem smoking tobacco, short, occasioned as follows: 15 bbl., 1,925 lb., stem smoking tobacco, sold to Mess. Boynton & Smith, Sept. 9, '64.

84 Oct., 1864. Correct.

Nov. & Dec., 1864, Jan'y & Feb'y, March, April, May, June, July, Aug., Sept., Oct., Nov. & Dec., 1865, & Jan'y, 1866.

These months are from 1 to 700 lb. short, mostly on leaf & stem smoking. This is occasioned by a deduction made by Mess. Waterman & Co., of all tobacco returned to them from the month's sales, in which the same may have been returned; also, by selling what is termed mixed smoking, and returning the same as stem smoking.

The books are very irregularly kept, & for quite a long period no sales can be found. In all the large shortages we have the original or certified bills of purchase which cover the shortage mentioned. The book, when regularly kept, do not contain many of the bills we find of their sales, being in many instances covered by irregular entries in the cash, & otherwise, to cover up the sales.

Feb'y,	1864.	Shortage,	8,956 lb.	smoking tob.,	5c.....	427 80
April,	"	"	17,055 lb.	" "	5c.....	852 75
May,	"	"	13,200 lb.	" "	5c.....	660 00
July,	"	"	560 lb.	fine-cut	35c.....	196 00
"	"	"	2,100 lb.	leaf smoking,	25c.....	525 00
"	"	"	14,425 lb.	stem "	15c.....	2,163 75
Aug.,	"	"	1,040	fine-cut	35c.....	364 00
	"	"	525 lb.	leaf smok.	25c.....	141 25
	"	"	5,400 lb.	stem "	15c.....	810 00
		Add 50 %	from July 1, 1864.....			2,100 00
						$8,240 55

84a

EXHIBIT "B."

(3.)—*Form of manufacturer's monthly return.*—(*Section* 68.)

Account of the denominations and quantities of smoking tobacco manufactured, sold, or delivered by C. H. Waterman & Co., at No. 118 Water street, in the city of Chicago, county of Cook, and State of Illinois, from the 1st day of Feb'y to the 29 day of Feb'y, 1864, both days inclusive, and liable to a tax under the excise laws of the United States.

Denominations.	Goods, wares, and merchandise manufactured. Quantities. Tons.	Pounds.	Gallons.	Feet.	Thous'nds.	Value.	Goods, wares, and merchandise sold or delivered to others than agents. Quantities. Tons.	Pounds.	Gallons.	Feet.	Thous'nds.	Value.	Class.	Rate.	Amount of tax. Dolls.	Cents.
Smoking tobacco.....	....	8,175	....	....	....	....	....	1,200								
Total.....																

(Signed) _____ _____.

I, C. H. Waterman, do swear that the above is, to the best of my knowledge and belief, a complete and correct account of all the articles, goods, wares, and merchandise made, manufactured or produced by or for C. H. Waterman & Co., and for any other person or persons during the period aforesaid, and also of the quantities, denominations, and values thereof sold or removed for consumption or sale, or for delivery to others by them or their agents during the same period; and that I have taken all the means in my power to make this account complete and correct in each and every particular.

(Signed) C. H. WATERMAN & CO.

Sworn and subscribed before me this 10th day of March, A. D. 1864
W'M B.

(Endorsed:) Entered and reg'd by S. H. Streeter, assistant assessor, dist. 1, div. 3. Feb'y, 1864. "Exhibit B."

84*b* EXHIBIT C.

(3.)—*Form of manufacturer's monthly return.*—(*Section* 68.)

Account of the denominations and quantities of smoking tobacco manufactured, sold, or delivered by C. H. Waterman & Co, at No. So. Water street, in the city of Chicago, county of Cook, and State of Illinois, from the 1st day of April to the 30 day of April, 1864, *both days inclusive, and liable to a tax under the excise laws of the United States.*

Denominations.	Goods, wares, and merchandise manufactured.						Goods, wares, and merchandise sold or delivered to others than agents.									
	Quantities.						Quantities.								Amount of tax.	
	Tons.	Pounds.	Gallons.	Feet.	Thous'nds.	Value.	Tons	Pounds.	Gallons	Feet.	Thous'nds.	Value.	Class.	Rate.	Dolls.	Cts.
		17,250	....	....	....	....	....	28,275	....	....	....	....	....	5c.	1,413	75
Total.....																

(Signed) C. H. WATERMAN & CO.

I, C. H. Waterman, do swear that the above is, to the best of my knowledge and belief, a complete and correct account of all the articles, goods, wares, and merchandise made, manufactured, or produced by or for C. H. Waterman & Co., or for any other person or persons, during the period aforesaid, and also of the quantities, denominations, and values thereof sold or removed for consumption or sale, or for delivery to others by them or their agents, during the same period; and that I have taken all the means in my power to make this account complete and correct in each and every particular.

(Signed) C. H. WATERMAN.

Sworn to and subscribed before me this 10 day of May, A. D. 1864.
S. H. STREETER.

(Endorsed:) Ent'd and reg'd by S. H. Streeter, assistant assessor, dist. 1, div. 3. April, 1864. Exhibit "C."

84c Manufactured before the 1st of July:
Am't of smoking tob. sold in July, 3,600 lbs., @ 5c $180 00

Manufactured before the 1st of July:
Am't of fine-cut chewing and shorts sold in July, 640 lb., @ 15c $96 00

Manufactured in July:
Am't of stem tobacco sold in July, 7,125 lb., @ 15c..... $1,068 75

Manufactured in July:
Am't of Star No. 2, (leaf & stem,) sold in July, 225 lb., @ 25c $56 25

Manufactured in July:
Am't of fine-cut chewing sold in July, 40 lb., @ 35c.... $14 00
Am't of stem man'f'd in July, 9,450 lb., @ 15c.
Am't of Star No. 2, (stem & leaf,) m'f'd in July, 1,725 lb.
Am't of fine cut-chewing m'f'd in July, 40 lb.

84d EXHIBIT "D."

(3.)—*Form of manufacturer's monthly return.*—(*Section* 68.)

Account of the denominations and quantities of smoking tobacco manufactured, sold, or delivered by C. H. Waterman & Co., at No. 22 Market street, in the city of Chicago, county of Cook, and State of Illinois, from the 1st day of May to the 31 day of May, 1864, both days inclusive, and liable to a tax under the excise laws of the United States.

Denominations.	Goods, wares, and merchandise manufactured. Quantities.						Goods, wares, and merchandise sold or delivered to others than agents. Quantities.								
	Tons.	Pounds.	Gallons.	Feet.	Thous'nds.	Value.	Tons.	Pounds.	Gallons.	Feet.	Thous'nds.	Value.	Class.	Rate.	Amount of tax.
															Doll's Ct's.
Smoking tobacco.....	....	11,625	....	....	....	....	....	2,700	....	....	....	....	....	5	135 00
Total.....	....	.....	....	....	....	....	....	.....	....	....	....	....	....	....	....

(Signed) C. H. WATERMAN & CO.

I, W. C. Dunning, do swear that the above is, to the best of my knowledge and belief, a complete and correct account of all the articles, goods, wares, and merchandise made, manufactured, or produced by or for C. H. Waterman & Co., or for any other person or persons during the period aforesaid, and also of the quantities denominations, and value thereof, sold or removed for consumption or sale, or for delivery to others by them or their agents during the same period; and that I

have taken all the means in my power to make this account complete and correct in each and every particular.

(Signed) W. C. DUNNING.

Sworn and subscribed before me this 8 day of June, A. D. 1864.

S. H. STREETER.

(Endorsed:) Ent'd and reg'd by S. H. ———, per Root Streeter, assistant assessor, dist. 1, div. 3. May, 186—. Exhibit D.

84*e* EXHIBIT E.

(62.)—*Tobacco manufacturer's monthly return.*—22 *Market st.*

Account of the quantity and description of manufactured tobacco, including snuff, fine-cut tobacco, and cigars, produced, bonded for export, and sold or removed for consumption or sale by C. H. Waterman, of Chicago, county of Cook, and State of Ill., during the period commencing on the first day of July, and ending the 31 *day of July,* 1864, *both days inclusive.*

Tobacco produced.			Tobacco bonded for export.		Tobacco removed for consumption or sale.			Rates per pound.	Rates per thousand.	Amount of tax due.	
Description.	Pounds.	Thousands.	Description.	Pounds.	Description.	Pounds.	Thousands.			*Dolls.*	*Cts.*
Stem smoking ..	9,450				Stem smoking..	11,365	....	15c.	....	1,704	75
Leaf	1,725				Leaf	225	...	25c.	....	56	25
Fine-cut.....	40				Fine-cut.....	40	....	35c.	....	14	00
Total.....	.....	....			.....	.....	....	.....	....	1,775	00

(Signed) C. H. WATERMAN.

I, W. C. Dunning, do swear that the above is, to the best of my knowledge and belief, a complete and correct account of all the tobacco, snuff, and cigars made or manufactured by or for , or for any other person or persons during the period aforesaid, and also of the quantities and denominations thereof bonded for export, sold, or removed for consumption or sale, or for delivery to others by or agents during the same period; and that I have taken all the means in my power to make this account complete and correct in each and every particular.

(Signed) W. C. DUNNING.

Sworn and subscribed before me this 5 day of Aug., A. D. 1864.

C. L. ROOT,
As't Ass.

84 *f* EXHIBIT F.

(3.)—*Form of manufacturer's monthly return.*–(*Section* 68.)

Account of the denominations and quantities of tobacco manufactured, sold, or delivered by C. H H. Waterman, at No. 22 Market street, in the of county of and State of from the 1st day of Aug. to the 31 d y of Aug , 1864, both days inclusive, and liable to a tax under the excise laws of the United States.

Denominations.	Goods, wares, and merchandise manufactured. Quantities.						Goods, wares, and merchandise sold or delivered to others than agents.								
	Tons.	Pounds.	Gallons.	Feet.	Thousands.	Value.	Tons.	Pounds.	Gallons.	Feet.	Thousands.	Value.	Class.	Rate.	Amount of tax.
															Dolls. Cts.
Leaf smoking	....	1,200	....	....	....	....	....	950	....	....	....	....	....	25	237 50
Stem smoking	....	10,650	....	....	....	....	....	1,275	....	....	....	....	....	15	191 25
Chewing	....	.....	....	....	....	....	....	400	....	....	....	....	....	35	140 .....
Total	....	.....	....	....	....	....	....	.....	....	....	....	....	....	....	568 75

(Certificate.)

(Signed) C. H. WATERMAN.

I do swear that the above is, to the best of my knowledge and belief, a complete and correct account of all the articles, goods, wares, and merchandise made, manufactured, and produced by or for or for any other person or persons, during the period aforesaid, and also of the quantities, denominations, and values thereof, sold or removed for consumption or sale, or for delivery to others, by , or agents, during the same period; and that I have taken all the means in my power to make this account complete and correct in each and every particular.

(Signed) W. C. DUNNING.

Sworn and subscribed before me this 6th day of Sept., A. D. 1864.

C. L. ROOT,
Ass't Ass'r.

(Endorsed:) Ent'd and reg'd by C. L. Root, assistant assessor, dis't 1, div. 5. Aug., 1864. "Exhibit F."

85 And to further maintain the said issues the United States, by the district attorney aforesaid, offered and read in evidence the depositions of George A. Shufeldt, B. B. Boyingtong, and George Hibben, and which depositions are as follows, that is to say:

Depositions of GEO. A. SHUFELDT, & B. B. BOYINGTON, & GEO. HIBBEN, taken at Chicago, Ill., on the 22nd day of August, 1867, before P. A. Hoyne, U. S. commissioner.

Deposition of Geo. A. Shufeldt.

Question. What is your name, age, occupation, and place of residence?

Answer. My name is George A. Shufeldt, j'r; my age is 37 years; my occupation, I am proprietor of the Artesian Well and Ice Company; I reside in Chicago, Illinois.

Question. Do you know Charles H. Waterman, tobacco manufacturer, of this city?

Answer. I do.

Question. Did you ever purchase any manufactured tobacco of Cha's H. Waterman or C. H. Waterman & Co.; if yea, did you make
86 more than one purchase of said party or parties; and when did you make such purchase or purchases?

I did buy some tobacco of C. H. Waterman & Co. I suppose it was some time in April, 1864. I bought from him one hundred and fifty barrels of smoking tobacco. Whether it was all bought at the same time I cannot say. My impression is that it was bought in 50-barrel lots.

Have you the original bill of the purchase referred to in your last answer; and if so, will you please to produce the same, and make it a part of your deposition?

This is the original bill. The word "entered" is in my own handwriting, to show that it was entered in my books. I mark it "Exhibit G," and attach the name to my deposition. The entry in my account-book is, "Bought of C. H. Waterman 150 barrels of tobacco, April 16, $2,115. Stored at 45 Wabash avenue."

Question. What did you do with the tobacco so purchased?

(Objected to by counsel for Waterman as immaterial.)

87 The tobacco was sold or burnt up, I cannot say which, as we lost considerable tobacco by fire.

Cross-examination:

Question. Do you recollect if this tobacco was delivered in different parcels at different times, extending to a period of from 4 to 6 weeks?

The tobacco was delivered by the wagon-load, from 13 to 15 barrels at a time. It was some time in being delivered. I should think it was all delivered within a month. I should think probably it was in the month previous to the date of the bill, 16th day of April.

Was this purchase of tobacco effected by or through Mr. Quinlan?

It was Mr. Quinlan made the purchase.

GEO. A. SHUFELDT, JR.

It is conceded by Mr. Waterman and his counsel that he commenced the manufacture of tobacco in the city of Chicago in the month of June, 1863, and that he remained in the business up to the time of the seizure on the 5th day of February, A. D. 1866.

88 EXHIBIT "G."

CHICAGO, *Ap'l* 16, 1864.

M. Geo. Shufeldt bought of C. H. Waterman & Co., wholesale dealer in manufactured tobacco—plug, fine-cut, smoking, cigars, &c. Terms cash. Nos. 118 and 120 South Water street:

Ap'l 16.	To 50 bbls.	Star	No. 1, 75=3,750, 20c.....	750 00
" "	" 50 "	"	No. 2, "=3,750, 18c.....	675 00
" "	" 50 "	"	No. 3, "=3,750, 17c.....	637 50
				52 50
				$2,115 00

Received payment.

C. H. WATERMAN & CO.

Entered.

C. S. B.

Deposition of B. B. Boyington.

B. B. Boyington, of the city of Chicago. Am a grocer, of the firm of Boynton & Smith. I have purchased manufactured tobacco of C. H. Waterman, and I have the bills of the purchase so made, and are hereby attached to my deposition, and marked Exhibits "H" & "I."

Cross-examination:

I can recollect purchasing tobacco, but do not remember dates. I am guided by the bills and books as to dates and amounts.

BARNEY B. BOYNTON.

89 EXHIBIT "H."

Fine-cut chewing.
0
Lone Star.
Mountain Dew.
Redbird.
Shorts.
0
Smoking
0
Star No. 1.
Star No. 2.
Star No. 3.
Stem.

CHICAGO, *Sept. 9th*, 1864.

Messrs. Boynton & Smith bought of C. H. Waterman, wholesale dealer & manufacturer of tobacco. A general assortment of plug and cigars constantly on hand, at No. 22 Market street, Chicago. P. O. box 4309. All claims for allowances must be reported on receipt of goods.

15 bbls. 35c.; 1,125, lb., stem smoking, 24..... $275 25

Rec'd payment.

C. H. WATERMAN,
Per W. C. DUNNING.

[2 c'ts rev. stamp, cancelled.]

(Endorsed:) Admitted by counsel to be correct.

EXHIBIT "I."

CHICAGO, *June 17th*, 1864.

Messrs. Boynton & Smith bought of C. H. Waterman, wholesale
Terms cash. dealers in manufactured tobacco, plug, fine-cut, smoking, cigars, &c., No. 22 Market street.

90 9 bbls., 35c.; 675 lb., stem smoking tob., 13c..... 84 60
Cr. Your ac. all'd..... 63 77

$20 83

Rec. payment.

C. H. WATERMAN,
Per W. C. DUNNING.

[2-c't int. rev. stamp, cancelled.]

(Endorsed:) Admitted by counsel to be correct.

Deposition of Geo. Hibben.

What is your name, age, occupation, and place of residence; and are you acquainted with Cha's H. Waterman & Co.?

My name is George Hibben; my age is 48; I am a merchant of the

firm of Hibben & Co.; I reside in the city of Chicago, Illinois; I am acquainted with Charles H. Waterman & Co.

Question. Have you ever purchased any manufactured tobacco of Cha's H. Waterman, or C. H. Waterman & Co.?

I have.

Question. Please to state the dates and amounts of such purchases.

I bought from Mr. Waterman, Aug. 19, 1864, 25 barrels of stem
91 smoking, 1,875⅌, @ 22 per pound—$421 25. (The packages were 35c. each.)

Aug. 22, 1864. The same amount, same price, & same weights.

May 6, 1865. 51 barrels stem smoking, 3,825 pounds, at 20c—$765 00; 9 barrels, 630⅌, 20c.—$126 00; 5 kegs, 200 pounds, 20c.—$40 00; 60 packages, @ 35c.—$21 00.

July 15, 1865. 3 kegs fine-cut chewing, 60 pounds, @ 80c.—$48 00. (Kegs were 50c. each.)

GEORGE HIBBEN.

It is admitted by counsel for C. H. Waterman that Pollard and Doane purchased manufactured tobacco of C. H. Waterman in the months of February, March, and April, 1864, to the amount of $1,500. Exhibit "K."

EXHIBIT "K."

CHICAGO, *June* 15, 1864.

Geo. W. King & Co. bo't of C. H. Waterman.

88 h'f bbls., 30c., s. tob'c		26 40	
	6,600⅌, 13	858	
54 " " 30c., ⅌2 "			
	4,050, 14½	603 45	
			1,487 85

(Copy.)

92 CHICAGO, *July* 20, 1864.

Geo. W. King & Co. bo't of C. H. Waterman.

26 b'r'ls, 35c.; smo. tob'c, 1950, 27 ..... 535 60

(Copy.)

(Endorsed:) It is admitted that Geo. W. King will testify that he bought the within am't of tobacco, were he present, of C. H. Waterman.

And to further maintain the aforesaid issues, the United States, by the aforesaid district attorney, presented a statement purporting to have been made by Joseph Pollock, and an admission memorandum by the said Charles H. Waterman, claimant, as follows: "Admitted that the last item of one hundred barrels is correct; and also that Waterman sold him 50 barrels, probably about the time of the first entry;" which admission of the sale of one hundred and fifty barrels was read in evidence by the said district attorney without objection, and which statement is as follows, that is to say:

Statement of Pollock.

In April, 1864, Joseph Pollock says he bought of C. H. Waterman & Co.—

See page 39, D. B. W. C. Gage.

50 bbls., @ 15, which would be 3,750	562 50	
50 " @ 11, " " " 3,750	637 50	
100 bbls., say @ 35	35 00	
		1,235 00

93 For which he paid cash on the day which the bill was made out. Mr. Vesalius acted as his broker and knew all about the sale.

July 26, 1864, he paid by his check on Leopold Meyer & Co., for 100 bbls. tobacco		1,605 00
which would be 7,500 lbs, @ 21	1,575 00	
& 100 bbls	30	
		1,605 00

See deposit a|c. page 222, July 25, '64, day-book W. Andrews & Co.

(Endorsed:) By agreement of counsel for Waterman, it is admitted that the last item of one hundred barrels is correct; and also that Waterman sold him 50 barrels probably about the time of the first entry.

And to further maintain the said issues, The United States, by the district attorney aforesaid, further read in evidence the following monthly returns of the said Charles H. Waterman, and which returns are as follows, that is to say:

(The monthly returns here called for have been inserted in this record between pages 84 & 85.)

94 And to further maintain the said issues, The United States, by the district attorney aforesaid, offered and read in evidence certain bills, with an endorsement in writing thereon, of admission by the said Charles H. Waterman, and which bills and indorsements are as follows, that is to say:

CHICAGO, *July* 27, 1864.

Messrs. L. Barber & Son bought of C. H. Waterman, wholesale dealers in manufactured tobacco, plug, fine-cut, smoking, cigars, &c. Terms cash. No. 22 Market st.

5 barrels, 35c.; 375 lb. stem smoking tob., 22c	84 25

Rec'd payment.

C. H. WATERMAN,
Per W. C. DUNNING.

(Endorsed:) C. H. Waterman. July 27, '64.

This bill admitted by consent of both parties to be correct.

95 Fine-cut chewing.
0
Lone Star.
Mountain Dew.
Red Bird.
Shorts.
0
Smoking.
Star No. 1.
Star No. 2.
Star No. 3.
Stem.

CHICAGO, *Dec. 4th*, 1864.

Messrs. L. Barber & Son bought of C. H. Waterman, wholesale dealer & manufacturer of tobacco. A general assortment of plug and cigars constantly on hand. Terms cash. P. O. box 4309. At No. 22 Market street, Chicago. All claims for allowances must be reported on receipt of goods..

10 bbls., 35c.; 750 ⅌, stem smoking, @ 21 ..... $161 00

Rec. payment.

C. H. WATERMAN,
Per W. C. DUNNING.

[2-ct. rev. stamp, cancelled.]

(Indorsed:) C. H. Waterman. 12—4, 1864.

This bill admitted, by consent of both parties, to be correct.

CHICAGO, *May* 9, 1864.

Mess. L. Barber & Son, No. 241 S. Water st., bought of C. H. Waterman & Co., wholesale dealers in manufactured tobacco, plug, fine-cut, smoking, cigars, &c. Terms cash. Nos. 118 and 120 S. Water street.

96 May 9. To 5 bbls Star No. 1, 75; 375, 18c..... 67 50
" 5 packages, 35c 1 75
——$69 25

Received payment.

C. H. WATERMAN & CO.,
Per DUNNING.

(Endorsed:) C. H. Waterman & Co. May 9th, 1864.

This bill admitted by counsel of both parties to be correct.

Fine cut chewing.
Lone Star.
Mountain Dew.
Red Bird.
Shorts.
0
Smoking.
0
Star No. 1.
Star No. 2.
Star No. 3.
Stem.

CHICAGO, *Nov.* 29, 1864.

Messrs. L. Barber & Son bought of C. H. Waterman, wholesale dealer & manufacturer of tobacco. A general assortment of plug and cigars constantly on hand. Terms, cash. P. O. box, 4309. At No. 22 Market street, Chicago. All claims for allowances must be reported on receipt of goods.

7 boxes 34c.; 18 ⅌ Red Bird, 8 ?..... 20 38
Rec'd payment.

C. H. WATERMAN,
Per W. C. DUNNING.

[2 cts. rev. stamp, cancelled.]

97 (Endorsed:) C. H. Waterman. 11—29, 1864.

This bill admitted by consent of both parties to be correct.

CHICAGO, *May* 20, 1860.

Messrs. S. L. Barrett & Co., 22 Lake st., bought of C. H. Waterman &

Co., wholesale dealers in manufactured tobacco, plug, fine-cut, smoking, cigars, &c., No. 22 Market st. Terms cash.

25 barrels, 30c.; 1,875 lb. s. tobacco, 13c..... 257 25
Rec'd payment.
Delivered.

C. H. WATERMAN & CO.,
Per DUNNING.

(Endorsed:) C. H. Waterman & Co., May 25, '64.

This bill admitted by consent of both parties to be correct, except as to the year, which should be 1864, instead of 1860.

Fine cut chewing.
0
Lone Star.
Mountain Dew.
Red Bird.
Shorts.
0
98 Smoking.
0
Star No. 1.
Star No. 2.
Star No. 3.
Stem.

CHICAGO, *March* 25, 1865.

Messrs. Sprague, Warner & Co., bought of C. H. Waterman, wholesale dealer & manufacturer of tobacco. A general assortment of plug and cigars constantly on hand. Terms, cash. P. O., 4309. At No. 22 Market street, Chicago. All claims for allowances must be reported on receipt of goods.

100 bbls. 35c. each; 7,500 ※ stem smoking, 22..... 1,685 00
Less, 10 per cent. 1 mo..... 14

1,671 00

Rec'd payment by note, at thirty days.

C. H. WATERMAN,
Per W. C. DUNNING.

[2 cts. rev. stamp, cancelled.]

(Endorsed:) This bill admitted by consent of both parties to be correct.

CHICAGO, *July 2nd*, 1864.

M's L. Barrett & Co. bought of C. H. Waterman & Co., wholesale dealers in manufactured tobacco, plug, fine-cut, smoking, cigars, &c. Terms, cash. No. 22 Market st.

June 10. 20 bbls. 35c.; 1,500 lb' stem smoking tobacco, 13c... 202 00
Rec'd payment.

C. H. WATERMAN.
Per W. C. DUNNING.

(Endorsed:) C. H. Waterman & Co., July 2, '64.
This bill addmitted by consent of both parties to be correct.

99 And thereupon the United States, by the district attorney aforesaid, rested.

And thereupon the said Charles H. Waterman, claimant, offerred and read in evidence to the said jury, three depositions of William C. Dunning; two depositions of Charles B. Kundson; two depositions of the said Charles H. Waterman; the deposition of S. Quinlan; the deposition of C. H. Beckwith; the deposition of C. L. Root; the deposition

of Samuel Brooks; the deposition of George F. Murtaugh; the deposition of James Van Etta; the deposition of Louis Spect, and the deposition of E. Frankenthal, and which depositions were and are as follows, that is to say:

Deposition of Dunning.

Deposition of W'M C. DUNNING, taken on August 22nd, 1867, at Chicago, Ill., before Phillip A. Hoyne, U. S. commissioner.

Int. 1. What is your name, age, occupation, and place of residence?

My name is William C. Dunning; 42 years of age; I am salesman; I reside in the city of Chicago.

100 Int. 2. Do you know Charles H. Waterman, and were you ever in his employ?

I do know him; I was in his employ; I commenced with him, I think, the 9th day of May, 1865, and was employed till the 9th day of June, 1865.

Int. 3. During the time you were in his employ, what business was he engaged in?

Manufacturing tobacco.

Int. 4. At what place was he engaged in the manufacture of tobacco, and in what capacity were you employed by him?

At 22 Market st., in Chicago. I was book-keeper and shipping clerk, and had a general oversight of the factory.

Int. 5. During the time you were in his employ, was any of the tobacco manufactured by Mr. Waterman, to your knowledge, sold or in any manner disposed of without being first inspected; and if so, how much?

101 There was never any *any* went out of the house without being first inspected, except one barrel of smoking tobacco, which was shipped through mistake, and this was, within 20 minutes after being shipped, made known to the inspector, who told me that it would have to go. He made a memorandum of it as inspected, so that if it should come back it could all be made right. I rolled it out myself through mistake.

Int. 6. Was Mr. Waterman present, and did he know the fact of that barrel being rolled out and sent away for shipment until after the transaction occurred?

He did not; I do not know as he ever knew it till this morning; I never told him.

Int. 7. During the time you were in the employ of Mr. Waterman did he, so far as you know, make correct returns of the amount of tobacco, and the particular grades of tobacco manufactured by him?

I think he did.

Int. 8. During the time you were in the employ of Mr. Waterman did you ever hear him say anything as to evading the revenue

102 laws of the United States, or do any act to avoid the payment of any of the duties by law imposed upon the tobacco manufactured by him; or did he, so far as you know, correctly and truly transact his tobacco business?

I did never hear him say anything about evading the taxes; I never knew him to do any act to avoid the payment of duties; as far as I know, his business was honestly and fairly transacted.

Int. 9. During the time you were employed by Mr. Waterman did he purchase any manufactured tobacco from others; of any, or what grades

or kinds; and if so, how much; and did he again sell the same or any, and what part thereof?

He bought all the plug, some shorts, smoking and fine-cut; I cannot tell the exact amount of smoking; I should say over 500 barrels while I was with him, together with the stock which he had on hand when I went there; I cannot say how much fine-cut; I presume I went out and purchased some 200 pounds while I was with him; it was all sold; we purchased it to fill orders.

103 Int. 10. Do you know of any tobacco which had been sold and delivered by Mr. Waterman being returned to and taken back by him.

There was some, but I do not know this of my own knowledge; I only heard that such was the case by statements of Mr. Gage and Mr. Beckwith. (Answer objected to by dis'ct attorney.) I know of some smoking tobacco and fine-cut which was shipped to the country, having been returned as not filling the orders according to sample; this occurred frequently; this would be in orders—3, 4, or 5 barrels of smoking, and 1 or 2 kegs of fine-cut chewing. Sometimes the fine-cut would be shipped back and the smoking retained, and, vice versa, the smoking would be returned and the fine-cut retained, and sometimes the whole order would come back.

Int. 11. Was the tobacco which Mr. Waterman purchased—of manufactured tobacco—when sold, noted upon his account books, containing accounts of sales of that which he had himself manufactured, or was there any entry made in any book; or was the same merely sold by him and collected by the bills and not by the books; or how was the business transacted as to the purchase of manufactured tobacco as a

104 general rule, or in particular cases?

They were not intended to be; they were put on bills and made out in duplicate and laid in the drawer, so that when the parties came we could have one to refer to. We would go out and purchase tobacco and send it into the country, then we would charge it to the parties we sent it to on the books; but purchases made from Waterman on city orders were merely kept on a bill and thrown into a drawer. When we sent a bill into the country, C. O. D., then a duplicate was made out and put into the drawer, and no entry made on the books.

Int. 12. Upon what books were any entries made of the sales sent into the country of tobacco purchased by Waterman?

They were made upon his day-book.

Int. 13. See if you recognize this book as one of the books of Mr. Waterman.

It is the shipping and receipt book. I put down the amount of the shipment and let the drayman have it to take his receipt of the

105 delivery of the same. There are some things in the book that I know nothing about.

Int. 14. While you were in the employ of Mr. Waterman did you ever make any examination of his account books containing entries as to his tobacco transactions before you commenced working for him; and did you, if so, make any comparison of the amount of the raw material and the amount appearing upon his books as manufactured tobacco; and if so, what did you discover, or what was the result of that examination and comparison?

(Objected to by dis'ct att'y.)

Yes, sir; I looked over his books; also made comparisons of the raw material and the amount of manufactured appearing upon his books.

I found that he had charged upon the books more tobacco manufactured than he had material to manufacture.

Int. 15. When a portion of the tobacco was returned to Mr. Waterman which he had sent out into the country on orders from that which he had purchased in a manufactured state, was there any alteration made on the books of Mr. Waterman?

106 There was no alteration made on the books; the amount returned was credited to the party returning the same.

Int. 16. Look at the day-book of Mr. Waterman, on page 17, under date Feb. 5th, 1864, where there appears to have been erasure, and state what you know, if anything, about said erasure. Look also on page 39 and 43, where there also appears erasures, and say what you know of them.

They were not carried out correct, and I called Mr. Waterman's attention to them, and they were altered; and, on page 43, I wrote fifteen barrels, which had been omitted, at 30c. apiece, and carried it out.

Int. 17. In manufacturing raw material is there any loss in weight in any, and what kinds of manufactured tobacco?

(Objected to, as the witness not being an expert, by dis'ct attorney.)

In fine cut there would be a loss of about a tenth on good leaf; in smoking, cut from the leaf, about the same; in cigar stems no loss; in manufactured stems about an eighth.

107 Have you been engaged in the manufacture of tobacco, except while you were engaged by Mr. Waterman?

I was 17½ months engaged in it, or about that time.

Int. 19. During the time you were with Mr. Waterman what number of machines did he have running, and were the machines constantly kept at work, and what was the capacity of each; if they were not constantly kept at work, what part of the time where they idle? State as near as you recollect.

He had two; they were not constantly kept at work. The capacity of each was 500 pounds of fine-cut; 1,500 pounds of smoking per day. They were about ¾ of the time idle, taking the two machines together. He did not run but one machine after the 1st of August, 1864, and that not half the time while I was with him.

Cross-examination:

1. X-int. What books of account did Mr. Waterman keep when you first went into his employ?

108 He had a ledger and journal, and some commission books.

2. X-int. By whom were his books kept before you went into his employ?

There was a man there, but I do not know his name. Some of the writing was done by Mr. Waterman himself.

3. X-int. In whose handwriting is the entry on the day-book, on page 17, in which erasures appear to have been made?

The writing appears to be Mr. Waterman's; the figures 123 75 and 127 60 are mine; the rest, I think, are Waterman's.

4. X-int. Did you make any of the erasures which appear there; and if so, which did you make?

The erasure where 123 75 appears; the other erasures I know nothing about.

5. X-int. Was Mr. Waterman present when you made the erasure over which 123 75 are written?

109 My impression is that he was; still he might not; his attention was called to it. I made no erasures in the books without calling his attention to it.

6. X-int. When did you make that erasure?

It was some time in May—soon after I went there.

7. X-int. Do you remember what were the figures which you erased?

I do not.

8. X-int. Why did you make the erasure?

Because the amount carried out was not correct.

9. X-int. In whose handwriting is the entry of the day-book, page 39, where erasures appear to have been made?

They are in Mr. Waterman's handwriting, except the figures 123 50 carried out. These, I think, are in my own. I am not positive. They are figures such as, I think, I should make with a steel pen.

10. X-int. Do you know who made the erasures in this entry?

110 I do not whether I made them, or whether Mr. Waterman did.

11. X-int. In whose handwriting is the entry on page 43, of the day-book, where erasures appear to have been made?

I do not know in whose handwriting it is, except the entry "15 barrels," "30c.," "4 50," "4 50," "210 75."

12. X-int. Do you know who made the erasures in this entry?

I do not.

13. X-int. Who made the manufacturer's returns while you were in Mr. Waterman's employ?

I think I did the most of the time.

14. X-int. Did Mr. Quinlan, the tobacco inspector, to your knowledge, examine any of Mr. Waterman's revenue returns before they were delivered to the assessor?

No, sir; he did not.

15. X-int. Did you, or did Mr. Waterman, in your hearing, have any conversation with Mr. Quinlan, the tobacco inspector, in reference to Mr. Waterman's returns of sales of tobacco manufactured by him?

111 No, sir; he did not.

16. X-int. Have you any book or memorandum from which you can now tell what amount of tobacco was manufactured by Mr. Waterman, while you were with him?

I have not.

17. X-int. From what date did you make up your returns of tobacco manufactured by Mr. Waterman, while you were with him?

I had a little book, (pocket memorandum,) in which I put in the amount of tobacco as it was inspected by the tobacco inspector.

18. X-int. Was the quantity of tobacco so inspected furnished you by Mr. Quinlan?

It was not.

19. X-int. How often did Mr. Quinlan inspect tobacco for Mr. Waterman?

I cannot tell; he was there every day.

20. X-int. Was there more than one memorandum-book in which you put down the amount of tobacco manufactured by Mr. Waterman?

112 Never but one while I was there, to my knowledge.

21. X-int. What became of that memorandum-book?

I left it in the pigeon hole in the desk when I left there; I have not seen it since.

22. X-int. Did you keep any memorandum-book aside from the day-book on which you entered sales of tobacco manufactured by Mr. Waterman?

No, sir.

23. X-int. Do you know anything of a contract made by Geo. W. King and Co. with Mr. Waterman, for the purchase of tobacco manufactured by him?

I do not know anything about any such contract.

24. X-int. How many pounds were there to a barrel of the tobacco manufactured by Mr. Waterman?

We used to put 75 pounds of smoking tobacco in a barrel; chewing, from 10 pounds to 40 pounds in a package.

25. X-int. Was any of the tobacco specified in those bills not of Mr. Waterman's manufacture?

113 (Here the attention of the witness is directed to the bills introduced and admitted as correct.)

I cannot say; it may be of his manufacture, and it may have been purchased.

26. X-int. Can you state of your own recollection, that any of the tobacco mentioned in these bills was not of Mr. Waterman's manufacture.

I cannot say; it would be impossible for me to pick out any one bill.

W. C. DUNNING.

Deposition of W. C. Dunning.

The deposition of W'm C. Dunning, taken at Chicago, Ill., on the 13th March, 1868, before P. A. Hoyne, U. S. Commissioner.

Int. 1. You have already heretofore testified that you had been in the employ of Charles H. Waterman, and stated the time when you commenced and quit. When was the time when you commenced, and when did you quit?

Ans. I commenced May 9th, 1864, and left June 9th, 1865.

Int. 2. During the time you was in the employ of Mr. Waterman, was all the raw or unmanufactured tobacco bought by him, or

114 only a part thereof put down in his account books?

(Objected to.)

Ans. It was, as far as I have any knowledge of it, all put in the books as long as I had charge of the books, which was until Kundson took charge of the books.

Int. 3. What is the quantity—net weight—of a hogshead of leaf tobacco, or are they of different weights; and if of different weights, what is the smallest, and what is the greatest quantity per hogshead?

Ans. They are of different weights, from six to twelve hundred; Virginia tobacco may run up to fifteen hundred. I should think that was about what they would weigh.

Int. 4. Is there any, and what per cent., loss in the weight, in the manufacturing of either leaf or stem tobacco, or both?

(Objected to.)

Ans. In stem tobacco, manufactured of manufacturer's stems, there would be a loss of about one tenth. There would be a loss in the leaf about the same in cutting it into chewing; but cutting leaf tobacco into smoking tobacco, there would be no loss. In cigar stems there is no loss, nor from the stems cut from the fine cut-leaf.

115 Int. 5. What proportion of the weight of leaf tobacco, as purchased by the hogshead, are the stems?

(Objected to.)

Ans. One-third.

Int. 6. In manufacturing leaf tobacco into fine-cut chewing, are the stems included or taken out; and if taken out, what kind of tobacco are they manufactured into?

Ans. In manufacturing fine-cut chewing, the stems are taken out and manufactured into stem smoking tobacco.

Int. 7. When you commenced work for Mr. Waterman, as you have already stated, had Mr. Waterman on hand any manufactured tobacco not yet entered on his account books; and if so, was the same afterwards entered upon those books by any one; and by whom?

Ans. He did have some unmanufactured tobacco that was not entered on his books, and I entered it myself.

Int. 8. Do you remember what the quantity was?

Ans. I do not.

116 Int. 9. Was there considerable or only a small quantity of it?

Ans. There was but a small quantity of it.

Int. 10. Do you know of their being a class of persons known among tobacco-dealers as street brokers; and what are street brokers, if you know such a class of persons?

Ans. I know there is such a class, and they sell all kinds goods, and all kinds of tobacco and segars by sample.

Int. 11. While you was in the employ of Mr. Waterman did he purchase manufactured tobacco of any of these persons called street brokers; and how were such purchases made, if any, and at what place made, and how, when, or where was payment made for any such purchase of tobacco?

Ans. He did purchase tobacco of street brokers, by sample, at 22 Market st., where he (Mr. Waterman) carried on the business of manufacturing and selling tobacco. H' purchased, by sample, at 22 Market st., and payment was made when the tobacco was delivered, or at such time as was agreed upon.

117 Int. 12. When delivery was made of the tobacco purchased of these street brokers, was anything done, and what, to ascertain the quantity of tobacco delivered?

Ans. It was either weighed, or the barrels counted to see that the weight was correct.

Int. 13. In making sales by the street brokers to Mr. Waterman, did they deliver any bills of the sale to him, or did he take bills?

Ans. Not from them. On the time sales they would hand in a statement at the end of the time agreed upon. Sometimes the drayman would bring a bill, but nothing was done with it except to see that it was correct.

Int. 14. What proportion of the purchases made of the street brokers was on time?

Ans. I should say three-quarters of them, if not more.

Int. 15. Do you know who these street brokers were of whom these purchases were made?

Ans. I do not.

118 Int. 16. Did they ever give their names, to your knowledge?

Ans. They would if they were asked. They would hand their card and show their sample.

Int. 17. What proportion of these purchases were accompanied with bills?

Ans. I could not tell.

Int. 18. Can you tell whether many or only a few of them were?

Ans. I saw a few, but cannot tell how many.

Int. 19. Such bills as were sent in, do you know what finally became of them?

Ans. They were stuck on the spindle or thrown in the drawer. I left them there when I went away.

Int. 20. At the time you commenced work for Mr. Waterman, had he then commenced the manufacture of tobacco; and if so, what quantity was his then machinery capable of turning out per day?

(Objected to.)

119 Ans. He had not commenced where he was then doing business, but I understood he had been manufacturing under the Times office with an old machine, cutting smoking tobacco. The machinery was capable of turning out twelve hundred pounds of fine-cut chewing, or three thousand pounds of smoking tobacco. I mean the new machine at No. 22 Market st.

Int. 21. While you was with Mr. Waterman, did he keep his machinery constantly manufacturing tobacco; and how soon after you commenced work did he commence manufacturing tobacco, and what proportion of the time, if any, did he not manufacture, and what number of machines did he run?

(Objected to.)

Ans. While I was with him he did not keep his machinery constantly manufacturing tobacco. He commenced manufacturing about thirty or forty days after I commenced to work for him. He did not manufacture about three-quarters of the time. I should think he could run two machines, but only run one nost of the time whilst he was running. Sometimes he run both when he had hands enough.

120 Int. 22. Do you know of Mr. Waterman's selling tobacco which he purchased in a manufactured state without the same being branded with his own brand?

Ans. He did without putting his own brand on, but usually put his own brand on.

Int. 23. During the time you was employed by Mr. Waterman, did any of the tobacco which he had on hand in manufactured state require to be, and was the same, unpacked or unbarreled or worked over; and if so, what quantity?

Ans. Don't know anything about it.

W. C. DUNNING.

121 *Deposition of Charles B. Knudson.*

Deposition of Charles B. Knudson, taken at Chicago, Ill., on September, 23rd, 1868, before Phillip A. Hoyne, U. S. commissioner.

What is your name, age, residence, and occupation?

My name is Charles B. Knudson. I am 45 years of age. I reside in Chicago. I am a book-keeper. At the time of the seizure of Mr. Charles H. Waterman's tobacco works I was in the employ of said Waterman, and had been in his employ over a year as book-keeper. On the day of that seizure there were in his establishment about 60 to 75 empty tobacco kegs which had the inspection marks upon them, and which were seized with the other effects. The reason why these kegs were empty was that the kegs had been previously filled, by Mr. Waterman, with tobacco, and inspected, the duty not paid, but it had been returned to the Government as manufactured tobacco. This tobacco became

122 musty, and for the purpose of saving it, and with the knowledge and consent of Mr. Quinlan, who was then the U. S. inspector, Mr. Waterman and one Mr. Ackley, who was in the employ of Mr. Waterman, emptied the tobacco out of the kegs. These kegs were then piled up in the room, and as we wanted the kegs they were refilled with either new tobacco or old tobacco, as we considered we had a right to

do, as the barrels had been already returned to Government as tobacco manufactured. This was also done by the consent and full knowledge of Mr. Quinlan, U. S. inspector. During the time I was in the employ of Mr. Waterman we bought, or took back from our customers a very few old kegs, and in every instance the inspection marks were all erased. We never bought from any persons than customers any old kegs, and then only kegs which we had charged them with. I do not think it possible for any book-keeper to tell, from Mr. Waterman's books, whether stem and leaf tobacco had been mixed, and then sold as leaf tobacco and returned to Government as stem tobacco; but I know that no such mixing was ever done, while I was with him. But frequently
123 we cut stem and leaf tobacco together for leaf smoking tobacco, but in every such instance it was returned to Government as leaf smoking tobacco, and the tax paid on the same as such.

(Testimony objected to, and cross-examination waived by L. H. Bontell, ass't dis'ct attorney.)

CHARLES B. KNUDSON.

Dep. of C. B. Knudson.

Deposition of Charles B. Knudson, taken at Chicago, Ill., before P. A. Hoyne, U. S. com., August 22, 1867.

Int. 1. What is your name, age, occupation and place of residence?

Charles B. Kundson; 54 years; I am book-keeper; I reside in the city of Chicago.

Int. 2. Do you know Charles H. Waterman, and were you ever in his employ; and if so, when, and how long, and in what capacity?

I do know him; I was in his employ in the year 1865, till the month of July, 1866. I commenced in the middle of March, 1865. I was book-keeper.

Int. 3. In what business was Mr. Waterman engaged, while you were employed by him?

124 In the manufacture of tobacco.

Int. 4. Were you present at the time the collector made a seizure of Mr. Waterman's tobacco and machinery in the city of Chicago, on or about the 5th day of February, 1866?

I was.

Int. 5. On that occasion did the collector or those in his employ take all the account books of Waterman, or any, and which of them?

Yes, sir; they took all of them.

Int. 6. Did they retain them all so long as you remained in Mr. Waterman's employ, or were some of them—and which of them—returned; and how long after the seizure were they so returned?

They did not return them all during my stay with Mr. Waterman. A part of them were returned; those which had been kept by me were returned. I should think it some over a month before they were returned. Soon after I commenced work for Mr. Waterman, I opened a new set of books; these were the ones returned, and all the old books of Mr. Waterman were retained by the collector, or some one acting under him.

125 Int. 7. About what date did the set of books you opened commence with?

I think they were commenced about July, 1865.

Int. 8. Did you, while you were in the employ of Mr. Waterman, keep a correct account of all the sales of tobacco made by him which he manufactured?

I did.

Int. 9. Was all the tobacco manufactured by Mr. Waterman, while you were in his employ inspected, and were correct returns made of the amounts of tobacco sold which had been manufactured by Mr. Waterman?

It was all inspected and correct returns were made.

Int. 10. How do you know that correct returns were made?

Ans. Because, before the returns were made, I always compared my returns with the account of the inspector to see that they agreed, and the receipts always corresponded with sales. I mean by this that the cash account was straight and agreed with the sales.

126 Int. 11. During the period of time you were in the employ of Mr. Waterman, was his account short as to any of the tobacco manufactured by him?

No, sir.

Int. 12. Was there any of the tobacco manufactured by Mr. Waterman sold or disposed of without being inspected before the same was delivered to the purchasers, or other receiving party?

No, sir; not to my knowledge.

Int. 13. Do you know of Mr. Waterman, or any one in his employ, doing any act or attempting to do any act which could have resulted in defrauding the Gov't of any revenue, or of keeping from the Government any duties, or in the evasion of the payment of any duties upon any of the tobacco manufactured by him.

No, sir; I do not in any instance.

Int. 14. Was all the tobacco business of Mr. Waterman, during the time you were in his employ, honestly carried on and conducted, so far as you have any knowledge of the conducting of that business, or how otherwise was the fact?

127 It was, as far as I know, honestly carried on.

Int. 15. Was Mr. Dunning in the employ of Mr. Waterman at the time you commenced working for him?

He was.

Int. 16. Do you recollect of there being any tobacco received by Mr. Waterman in an unmanufactured state after the collector made the seizure; and if so, how long after, and was that tobacco placed in the building at the place where Mr. Waterman carried on his tobacco business; and if so, what kind of tobacco was there, and how much, and what became of it, and what was the cause of its being put into the building?

Answer. I do remember of some tobacco being received after the seizure: it was several days after—perhaps a week. It was placed in the building where Mr. Waterman carried on his business. It was one hogshead Kentucky leaf. This was seized and sold by the collector with the rest of it. It was put into the building to protect it from rain and from thieves. It was raining and a sleet when it was rolled in.

CHARLES B. KNUDSON.

128 *Dep. of C. B. Knudson.*

Deposition of Charles B. Knudson, taken at Chicago, Ill., on March 13th, 1868, before Phillip A. Hoyne, U. S. commissioner.

Int. 1. While you was in the employ of Charles H. Waterman, as you have heretofore testified, was all the raw or unmanufactured tobacco put upon the books of Mr. Waterman by any one, and by whom?

(Objected to.)

Ans. It was by me.

Int. 2. During the time you were so employed by Mr. Waterman were you his only book-keeper?

(Objected to.)

Ans. I was.

Int. 3. Do his books, during the time you kept them, contain a complete, truthful, and full record of Mr. Waterman's transactions as a purch'er, manufacturer, and seller of tobacco.

(Objected to.)

Ans. They do.

Int. 4. During the time you were so employed by Mr. Waterman, do know of his purchasing manufactured tobacco of any person or persons called street brokers?

Ans. No, sir.

Int. 5. Do you know that there are such a class known among tobacco dealers as street brokers?

Ans. I believe there are.

129 Int. 6. While you was so in the employ of Mr. Waterman, do you recollect or know of his purchasing manufactured tobacco of any person or persons by sample or otherwise?

Ans. I don't remember.

Int. 7. At the time the seizure was made of the tobacco and machinery in the possession of Mr. Waterman, at his place of business, was all his manufactured tobacco in boxes, kegs, or barrels, or was any, and if any, what portion, lying on the floor unpacked or unboxed?

Ans. The greater part was in boxes, kegs, or barrels, and a portion consisting of smoking tobacco, fine-cut, and stems lying loose on the floor.

Int. 8. Was that portion lying loose upon the floor taken up, barreled or boxed, by any one after the seizure was made; and if so, by whom?

Ans. Yes, it was all taken up by men sent from the internal revenue department, boxed and barreled.

Int. 9. Was you present when the seizure was made?

Ans. I believe I was; don't exactly understand what is meant

130 by seizure. I was present when the officers Assessor Page and Ass't Assessor Field, Collector Snyder and two dep't assessors took possession of the whole establishment.

Int. 10. At that time did they also take possession of Mr. Waterman's books of account?

Ans. They did.

Int. 11. Who took them?

Ans. Ass't Assessor Field; that is, he took the books out of my hands.

Int. 12. What was done with those books?

Ans. They were taken away by those parties and I don't *not* know what became of them.

Int. 13. On that occasion were all the account books of Mr. Waterman taken away by those parties?

Ans. Yes; they were.

Int. 14. Were any of those books ever returned to Mr. Waterman?

Ans. Yes; only part of them.

Int. 15. Which of them were so returned?

Ans. Only those kept by me.

131 Int. 16. How long after they were taken away before they were returned?

Ans. I can't say exactly.

CHARLES B KNUDSON.

Mr KNUDSON recalled.

Int. 1. Whose books are those and by whom were they kept?

Ans. They are Mr. C. H. Waterman's, and are kept by me.

Int. 2. Did you ever keep an account or make memorandum of the weight and kind of tobacco which were seized and taken from Mr. Waterman, as you have already testified, and which was subsequently sold at public vendue by the marshal of this district, in this city, by one of his deputies.

Ans. Yes; I did.

Int. 3. Have you that memorandum now?

Ans. I think I have.

Int. 4. Will you produce it and state whether that is correct?

132 Ans. Yes; it is correct, to the best of my knowledge and belief, and I here produce it and mark the same Exhibits B.

Int. 5. Did you make any memorandum of the quantity in weight, and the kinds of tobacco which was seized and taken from Mr. Waterman, as you have already testified?

Ans. I did.

Int. 6. Will you produce that memorandum and state if it is correct, and the quantity and kinds of tobacco?

Ans. Yes; I here produce it: Stock on hand when seizure took place, fine-cut chewing tobacco, 5,955$\frac{9}{16}$ lbs.: leaf smoking tobacco, 4,455 lbs.; stem smoking tobacco, 1,206½ lbs. There was a hogshead and a half (about) leaf tobacco not manufactured, which is not on this memorandum.

CHARLES B. KNUDSON.

"EXHIBITS B."

Stock on hand when seizure took place:

Fine-cut chewing	5,955$\frac{9}{16}$ lb'.
Leaf smoking	4,455
Stem ditto	1,206½

133 EXHIBIT B.

Sold Rothschild & Adler on July 7, '66:

Del'v'd 9 July.	10 kegs Lone Star, 266½ lb'. *a* 50c. ⅜	135 78	
	1½ h'h'ds leaf tob'co 1,550 " " 7c.	108 50	
			244 28

John Hutchinson:

Del'v'd 9 July.	40 kegs shorts 1,531 lb'. *a* 17c.	260 27	
	12 " Star ※ 3 861 " " 8c.	68 88	
			329 15

L. Lindheim:

49 kegs M. Dew, 1,584½ lb' " 37½c.		594 19

Sold July 9th, '66, to Van Horn.

76 kegs Sunrise, 1,833 lb'. *a* 13c.	238 29	
21 " Lone Star, 468 " " 36½c.	170 82	
48 " Red Bird, 1,193½ " " 13¼c.	158 14	
38 bbls. 1 box } stems 2,402½ " " 8¼c.	198 17	
21 bbls. Star ※ 1,1,419 " " 16c.	227 04	
4 " " " 4, 246 " " 8¼c.	20 30	
		$1,012 76

RECAPITULATION.

Rothschild & Adler	$244 28
John Hutchinson	329 15
L. Lindheim	594 19
Van Horn	1,012 76
	$2,180 38

134 Depositions of C. H. Waterman, taken at Chicago, 22nd Aug. 1867, before P. A. Hoyne, U. S. com.

Int. What is your name, age, occupation, and place of residence?

My name is Charles H. Waterman; my age 55 years; I am in the insurance business; I reside in Chicago, Ills.

Int. 2. Have you ever been engaged in the business of manufacturing, buying, and selling of tobacco in the city of Chicago, and State of Illinois; if yea, when did you commence, and when did you quit?

I have been engaged in the manufacture of tobacco. I commenced in the winter of 1862 or 1863, I am not positive which. I left off the 5th day of February, 1866, at the time Mr. Snyder and Mr. Page made the seizure. I also bought and sold tobacco. I commenced my business in buying and selling tobacco.

Int. 3. For what purpose was the raw material on hand and in the place where you carried on your tobacco business at the time
135 and prior to the time when your tobacco, in a manufactured state, and your machinery for manufacturing, were seized by the collector, on or about the 5th day of February, A. D. 1866?

For the purpose of manufacturing and being manufactured into smoking and chewing tobacco.

Int. 4. Was it there for any other purpose?

No, sir.

Int. 5. For what purpose was the machinery which was seized in that building at and prior to the time of seizure?

For the purpose of the manufacture of tobacco.

Int. 6. Was it for any other purpose?

No, sir; It was not.

Int. 7. For what purpose was that raw material to be manufactured into tobacco?

For the purpose of selling.

Int. 8. Was that to be manufactured for the purpose of selling or being in any manner disposed of without the payment of the duties
136 by law thereon imposed, or for the purpose of evading the payment of the duties or any part of the duties thereon imposed, or for the purpose of defrauding the Government out of any sum of money whatsoever, or for the purpose of sale after inspection.

(Question objected to by dis'ct attorney.)

I never intended to engage in the manufacture of tobacco with any view of defrauding the Government, and it was not there for that purpose, but I have always, as far as I knew, complied with all the requirements and provisions of the law, and never, to my knowledge, have I ever avoided, or tried in any manner to evade any of the requirements or provisions of the law.

Int. 9. What amount of tobacco did you purchase in a manufactured state, and again sell during the time you were engaged in the tobacco business?

I should think from 1,000 to 1,500 barrels.

Int. 10. Of what kind was that?

This was of smoking tobacco. I also purchased and sold about
137 from 2,000 to 2,500 pounds of fine-cut chewing; perhaps more.

Int. 11. Of that tobacco which you purchased in a manufactured state, did you sell any to parties in the city of Chicago?

I did.

Int. 12. What or about what proportion of it did you sell to parties in the city of Chicago?

I should think, perhaps, at least one-half, but perhaps two-thirds would come nearer to it. I cannot tell exactly.

Int. 13. Was any of that tobacco which you purchased in a manufactured state included in bills which also contained some which was manufactured by yourself?

There probably was. I think there was.

Int. 14. Were you in the habit, or did you direct any person in your employ to make entries upon your books of the sales made by you of the tobacco which you purchased in a manufactured state, or how, as a general thing, was the business of such sales conducted?

138 I was in the habit of making sales of manufactured tobacco purchased by me, selling it by making a bill of it, collecting from the bills, and did not, as a general thing, make a practice of entering it upon the books; or a small portion of it was entered upon the books. This was my direction, to those employed by me, to make sales this way without entering it upon the books. My reason for this was so that I should not mix the tobacco purchased with the tobacco manufactured by me, and upon which I had to pay taxes.

Int. 15. During the time you were engaged in the manufacture of tobacco, did you or did any one in your employ, to your knowledge, do any act, or attempt to do any act, for the purpose of evading or avoiding the payment of any duties upon any of the tobacco manufactured by you, or for the purpose of defrauding the Government out of any revenue, or out of any sums of money whatsoever?

I am sure I did not, and I do not know that any one in my employ ever did in any way or manner. I have always stood ready and willing to pay every demand, or any duty imposed by law for revenue, or for any other *other* purpose or claim of the Government up to the time of the seizure.

139 Int. 16. Was there any of the tobacco manufactured by you which was not inspected before a sale and delivery thereof?

None that I know of, except what Mr. Quinlan spoke of, and I have but an indistinct recollection of this. I had not thought of this for some two or *or* three years, but I presume he has stated it correctly. I knew nothing about the barrel of which Mr. Dunning spoke about in his testimony, until it was mentioned by him in his evidence.

Int. 17. Before Mr. Dunning commenced working for you, who kept your books of account as to your tobacco transactions?

I kept them myself, except a few days, when a young man in my employ kept them. I have forgotten his name, but principally I kept them.

Int. 18. Are you a professional book-keeper, or do you understand the theory or plan of book-keeping generally practiced by book-keepers or accountants?

I am not a professional book-keeper, neither do I understand the theory.

Int. 19. Do you recollect what was the cause of the erasure,

140 on page 17 of the day-book, where there now appears to be charged 11 barrels of tobacco? If yea, what was the original entry, and what was the cause of that entry, and which is the correct entry, the one now upon the books or the original?

I do recollect; I sold Mr. C. H. Beckwith 100 barrels smoking tobacco; he kept it some two or three weeks, (I made the entry of the sale of 100 barrels at the time,) and returned to me 89 barrels. I erased, or caused to be erased, the 100, and made it read 11, the actual amount of the sale, and the entry as it stands is correct.

Int. 20. The entries on pages 39 and 43, where erasures appear, are they now, as they appear upon the books, correct entries of the actual amount sold on each occasion, and retained by the purchasers with the actual prices at which the same was sold; and who were those purchasers; and were those erasures made on account of tobacco being returned, or on account of the original entry being wrong, or were erasures made because of some other fact or facts?

The entries, as they now stand upon the book, are correct, and show the actual amount of the sale, and the prices for which the same
141 was sold. I do not now remember who the purchasers were. In regard to the erasures, I will say that while I kept the books I would make an entry of the sale of a lot of tobacco, and on investigation I would find that in the entry I had included tobacco which I had purchased; then I would make an erasure, and make it correspond with the facts. And when tobacco was sold, and the full amount was credited upon the books, if any part of it was returned, I corrected the entry by erasing the original and substituting the real amount of the sale. The books are full of these erasures. Some were made by me and some by Mr. Dunning, and one or other of these *erasures* was the cause of the erasures being made—to show exactly the amount of sale.

Int. 21. During the time that the subject-matter of the seizure of the property now in controversy was under consideration by the assessor, did you ever hear Mr. Page or Mr. Field, or any one else in the employ of Mr. Page, or Mr. Snyder, or any one in his employ, make any request for an explanation as to any shortage in your account of tobacco manufactured by you and sold, or of any sales, made by you, of tobacco which had been purchased by you in a manufactured state?

142 I have no recollection of either Mr. Page, Mr. Field, or Mr. Snyder, or any one in the employ of either one of them, ever making any such request, directly or indirectly, for an explanation for what I had manufactured, or bought and sold. They took the matter into their own hands and did not ask me for any explanation except that I was sworn, and I answered such questions as they propounded to me.

Int. 22. After the seizure of the property now in question in this case, did you receive any tobacco in an unmanufactured state which was finally taken away by the collector, or Mr. Page, or by some of the officers of the Government, or their employees, with the tobacco which was seized on Feb. 5th, 1865? If yea, what kind of tobacco was that; how much, where did it come from to you, and when did it arrive; what did you do with it, and what was the cause of your doing what you did with it? State fully all about that tobacco.

I did receive some tobacco. I rec'd a hogshead of Kentucky leaf tobacco about 1 week after the seizure was made. It lay on the sidewalk some two or three days in front of the store next to me. There
143 came up a heavy rain and snow storm while it lay there, and I

had it rolled into my store, 22 Market street, to keep it out of the storm. This tobacco came from Cincinnati, Ohio. After I rolled it into the store, Mr. Page and Mr. Snyder refused to let me take it out. It was taken from the store and placed with the other tobacco which was seized at my store and put into a store in the alley in the rear of where I live, 138 Wabash avenue. It was there sold by U. S. marshal, through one of his deputy. The tobacco was billed to me at 20c. per pound. I think there was between 1,100 and 1,300 pounds in the cask.

Int. 23. Was there at any time any agreement, arrangement, or understanding between you and Mr. Quinlan, the inspector, to the effect that he was to make returns incorrectly, or so as to cover or conceal any shortages of the tobacco manufactured by you, or that any act should be done by you whereby the Government was to be defrauded out of, or not to receive, the full amount of duties by law imposed upon the tobacco manufactured by you, or did you or Quinlan, to your knowledge, do any act, or attempt to do any act, whereby the Government should be defrauded out of any duties, or whereby the payment
144 of any duties were to be avoided or evaded?

I did not myself do anything to defraud the Government, neither did I ever make any proposition or agree to do anything to defraud the Government of its rights and dues; neither did Mr. Quinlan ever, to my knowledge, even make any such proposition, nor was there ever any such understanding between us, or any conversation between us on this point; and I would most emphatically answer, No, to every point embraced in this interrogatory.

Cross-examined:

1. X-int. Where did you purchase the manufactured tobacco which you say you bought?

I bought some of Vanetta & Freidman; some of a man by the name of Speck, on the west side—I think this is his name—and of various other parties I cannot now call to mind. I also bought of some Michigan parties.

2. X-int. Where are the bills of the tobacco which you say you purchased?

I cannot now say where they are. Some I did not take any bills of. Usually they were destroyed.

145 3. X-int. Did you ever make any entries of these purchases on your books.

I do not recollect now whether I did or not. If I did, the books will show.

4. X-int. Were your purchases of manufactured tobacco mostly made before or after you commenced manufacturing yourself?

I do not know as I can answer that correctly, as I purchased some before and some after I commenced manufacturing. I cannot divide it.

3. X-int. What proportion of the manufactured tobacco purchased by you was purchased of parties residing in the city of Chicago?

That would be hard to answer. I should think about one-third.

6. X-int. After you commenced manufacturing tobacco, did you make any purchases of manufactured tobacco, except to fill orders which you were not able to complete with tobacco of your own manufacture?

Yes, sir.

146 7. X-int. Did you purchase any smoking tobacco after you commenced the manufacture of tobacco, except to meet orders which you were not able to complete with tobacco of your own manufacture; and if so, how much, and when, and of whom did you make such purchases?

I did purchase manufactured smoking tobacco other than the orders then on hand—I cannot say how much—at various times; sometimes 10, some times 20 barrels at a time; of various tobacco brokers who were running around the streets. I often purchased of parties I did not know, and those that I have not seen since.

C. H. WATERMAN.

Dep. of C. H. Waterman.

Deposition of C. H. Waterman, taken at Chicaco, Ill's, March 13th, 1868, before Phillip A. Hoyne, U. S. commissioner.

Int. 1. Have you made search among any or all of your business papers in the place or places where you keep the same; and if so, have you found any bills or receipts, or way or freight bills of tobacco, either in a manufactured or unmanufactured state; and if so, did you find any such documents?

147 Ans. I have made search among all my business papers, and have looked them over a number of times. I have found receipts, and way or freight bills, and bills of unmanufactured and bills of manufactured tobacco. I searched in all places where I keep my business papers.

Int. 2. Have you such of those documents with you as you found? If yea, will you produce them and make them exhibits in evidence?

Ans. I here produce them. I think all of these bills except the five from Messrs. Boynton and Smith, are for unmanufactured tobacco.

Int. 3. Did you find any other such documents except those you have here presented?

Ans. I did not.

Int. 4. If other such documents you had, do you know where they now are, or what has become of them?

Ans. I do not know where they now are, or what has become of them, if I had any.

148 Int. 5. At what time did you commence the manufacture of tobacco yourself? And previous to that time did you purchase unmanufactured tobacco and procure any one else to manufacture it for you? and if so, who? and when did you first purchase unmanufactured tobacco?

Ans. I commenced manufacturing tobacco myself about the middle of April, 1863. I purchased unmanufactured tobacco February 12th, 1863. I employed Mr. Louis Specht to manufacture this tobacco for me.

Int. 6. What quantity of unmanufactured tobacco did you first purchase; and from that time to the 1st day of November, 1863, what was the whole quantity which you bought of unmanufactured tobacco?

Ans. I purchased three hundred and eleven pounds of stems unmanufactured. I can't state the quantity I purchased from that time 'till Nov. 1st, 1863.

Int. 7. Do you remember whether that quantity was large or small, or whether it was greater or less, for a corresponding length of time, after Mr. Dunning commenced work for you up to the time of the seizure in this case?

149 Ans. It was a small quantity compared with the amount I purchased after Mr. Dunning came to work for me for the corresponding period of time.

Int. 8. Previous to Mr. Dunning commencing work for you what was your machinery cap'le of turning out per day?

(Objected to.)

Ans. From eight to ten barrels per day, seventy-five pounds in a barrel; but did not in fact usually manufacture more than from two to three barrels a day.

Int. 9. Did you keep that machinery constantly at work, that is, each working day? If not, what proportion of the time was it wholly idle?

Ans. I did not keep it constantly at work. I should think it was idle from one-half to three quarters of the time.

C. H. WATERMAN.

Deposition of S. Quinlan.

Deposition of S. Quinlan, taken at Chicago, Ill., the 22d August, 1867, before P. A. Hoyne, U. S. commissioner.

Int. 1. What is your name, age, occupation, and place of
150 residence?

My name, Simon Quinlan; my age, 35 years; I am at present a grocer; I reside in the city of Chicago, county of Cook, and State of Illinois.

Int. 2. Do you know Charles H. Waterman, and how long have you known him?

I have known him since 1863.

Int. 3. Were you ever a Government inspector of tobacco in this city?

I was.

Int. 4. When did you first commence that business?

In the month of August, 1863.

Int. 5. Do you know when the Government first appointed a Government inspector of tobacco in the city of Chicago; if so, when?

Yes, sir; it was in August, 1863.

Int. 6. Did you, in fact, inspect tobacco manufactured before
151 the Government appointed an inspector, in 1863?

All I know about this is, that Mr. Snyder, the collector, had the appointing power, and I was appointed by him. I did not inspect any before I was so appointed.

Int. 7. Do you know at what time Charles H. Waterman commenced the manufacture of tobacco in the city of Chicago?

I do not.

Int. 8. Did you inspect any tobacco manufactured by Charles H. Waterman, in the city of Chicago?

Yes, sir.

Int. 9. Do you know of his manufacturing tobacco after you were appointed inspector, and selling, or in any manner disposing of it without its being first inspected?

Yes, sir; there was one lot of tobacco sent to a house on South Water Street, which I reported to the collector, who made a seizure of it, and Mr. Waterman gave such explanation of it that it was
152 immediately released. The explanation was, that a porter, by mistake, had taken some tobacco which had not been inspected and sent it off, leaving the tobacco which I had inspected the day previous for Mr. Waterman for this particular sale. I do not remember any other instance.

Int. 10. Did you correctly inspect all the tobacco which, to your knowledge, was manufactured by Charles H. Waterman during the period of time you were inspector?

I did; all that was required to be inspected by the Government at that time. At first there was certain kinds of manufactured tobacco which was not required to be inspected.

Int. 11. Was there at any time any agreement, arrangement, or understanding between you and Mr. Waterman to the effect that you were to make returns incorrectly, or so as to cover or conceal any shortages of the tobacco manufactured by Mr. Waterman, or that any act should be done by you and Mr. Waterman, or by either of you whereby the Government was to be defrauded out of, or not to receive the full amount of duties by law imposed upon the tobacco manufactured by C. H. Waterman; or did you, or did Mr. Waterman, to your knowledge, do any
153 act or attempt to do any act whereby the Government should be defrauded out of any duties, or whereby the payment of any duties were to be avoided or evaded?

No, sir; never—as to each and every point embraced in the interrogatory.

Int. 12. Do you remember of tobacco which had been sold and delivered by Mr. Waterman to parties in the city of Chicago being returned to Mr. Waterman; and if so, did this occur only once, or a number of times?

It occurred a number of times both from the city and country.

Int. 13. During the time of your being inspector did Mr. Waterman buy any tobacco in a manufactured state; and if so, how much, and was any portion of that reinspected by you?

I do know of his purchasing manufactured tobacco. I reinspected of such tobacco I should think about 800 to 1,000 packages. He made some purchases of plug tobacco which was not reinspected by me. What I mean by the term packages—I mean barrels & kegs. Barrels
154 would average about 75 pounds, net; kegs would average about 35 pounds, net. The bulk of this was smoking tobacco; the balance was fine-cut chewing tobacco.

Int. 14. Do you remember of a sale of tobacco to one Shufeldt of the city of Chicago, which purchase for Shufeldt was negotiated by you of Mr. Waterman; if so, what was the amount of tobacco purchased; and was the same delivered at once or at different times; and at what time was the contract of purchase made?

I remember such a purchase; it was in 1864. I believe the entire amount purchased was 150 barrels smoking tobacco. It was delivered at several different times; I think there was some three months intervening between the days of the sales and the complete delivery of the same.

SIMON QUINLIN.

Deposition of C. H. Beckwith.

Deposition of C. H. Beckwith, taken at Chicago, Ill., August 22nd, 1867, before P. A. Hoyne, U. S. commissioner.

Int. 1. What is your name, age, occupation, and place of residence?

155 My name is Charles H. Beckwith; 47 years of age; wholesale grocer; I reside in Chicago, Illinois.

Int. 2. Do you remember of purchasing of Charles H. Waterman 50 or more barrels of tobacco, of which you returned some portion; if yea, about when was said purchase made; what was the number of barrels purchased, and what number was returned to Mr. Waterman?

In February, 1864, I contracted with Mr. Waterman, or his agent, for 100 barrels smoking tobacco. The 100 barrels were delivered on my walk, and a bill rendered; on examination of the tobacco a few days afterwards I notified Mr. Waterman did not wish to keep it; he said he would send and take it away. He sent for the tobacco and I delivered him 89 barrels. He made a bill then, about the 15 of February, 1864, for the 11 barrels, and I paid him for the 11 barrels of tobacco, and he took the balance away. At his request I have searched and found the bill and brought it up here, and I here attached it to my deposition, and mark it "Exhibit 1." This is all I bought in the year 1864, which I recollect.

C. H. BECKWITH.

156 "EXHIBIT 1."

CHICAGO, *Feb.* 15, 1864.

M. C. H. Beckwith bought of C. H. Waterman & Co. wholesale dealers in manufactured tobacco—plug, fine-cut, smoking, cigars, &c. Terms cash. No's 118 & 120 South Water street.

[2-ct rev. stamp, cancelled.]

Feb. 15	To 11 bbls. tobacco 75, 825, 15	123	75
" " "	11 packages, 35 cts	3	85
" " "	2.39 beans at $2 75	7	31
		$134	91
	Bill	13	30
		121	61

Paid, C. H. WATERMAN & CO.
S. M. J.

Deposition of C. L. Root.

Deposition of C. L. Root, taken at Chicago, Ill., Aug. 22, 1867, before P. A. Hoyne, U. S. commissioner.

Int. 1. What is your name, age, residence, and occupation?

My name is Chester L. Root; my age is 37; I reside in the city of Chicago, county of Cook, and State of Illinois; I am a U. S. assistant assessor.

Int. 2. When did you commence the duties of ass't assessor for the 1st collection district of Illinois?

157 I was appointed Feb. 1, 1864.

Int. 3. Do you know Charles H. Waterman?

I do.

Int. 4. From Feb. 1, 1864 to Feb. 6, 1866, were you ever, and about how often, at the tobacco manufactory of Mr. Waterman?

My best impression is that soon after I commenced my duties, perhaps some 3 or 4 months after. Mr. Waterman's business was carried on in my district; then I was frequently in his place of business, as often as once in each month between the 1st and 10th of each month. I went there for the purpose of taking his monthly returns for the tobacco manufactured by him.

Int. 5. Were his monthly returns made up in your presence, and did you take them away with you, and did you at such time have free access to his books of account; and what examinations were made, if any,

for the purpose of making up those monthly returns, or how were the amounts returned arrived at? State fully what was done.

158 They were made up in my presence; I took them with me. I always had free access to his books of account. I usually went over with the book-keeper and assisted him in making up their monthly returns from the books.

Int. 6. On any occasion did Mr. Waterman make inquiry of you whether he was carrying on the manufacture of the tobacco business, or did he occasionally make inquiry of you as to particular matters so as to, or from which he could obtain information what was the correct mode of action in relation to these matters?

I frequently had conversation with Mr. Waterman in regard to the manufacture of tobacco, tax thereon, and the manner of making returns. Mr. Waterman was always free in disclosing his business, and always ready to give me all the information in regard to his business, so that the proper and correct returns should be made. He was very inquisitive about the matter, frequently asking questions, so that he might be able to make his returns correctly. This always seemed to me, from his general conversation, to be his object and intention.

(Answer to the last question objected to by dis'ct attorney.)

C. L. ROOT.

159 *Deposition of Sam'l Brooks.*

Deposition of Samuel Brooks, taken at Chicago, Ill., September 23rd, 1868, before P. A. Hoyne, U. S. com.

What is your name, age, residence, and occupation?

My name is Samuel Brooks; I am 38 years of age; I reside in the city of Chicago, county of Cook, & State of Illinois. I am a book-keeper by profession, and I have examined the books of Cha's H. Waterman, of Chicago. I examined the two day-books, journal, ledger, and the monthly return-book, as the same were kept from Nov. 30th, 1863, to February 1, 1866, inclusive of the two dates. These books purport to keep a full account of all his business during those years. On a close examination of the books aforesaid I find the amount of raw material, stem and leaf tobacco purchased by Mr. Waterman during the year 1863, to be 13,027 pounds; during the year 1864, to be 71,216½ pounds; during the year 1865, to be 57,144 pounds; during the year 1866, and up to the time of the seizure by the U. S. officers, 1,215 pounds; total amount for those years 143,602½ pounds. I also examined the United States tax receipts showing duties paid by Mr. Waterman during the years 1863, 1864, and 1865, and I find that he paid, as per such receipts, to

160 Government—

During the year 1863, for manufacturing tobacco on 19,852 pounds.

During the year 1864 for manufacturing tobacco....	86,218	pounds.
During the year 1865 " " "	76,649 $\frac{8}{10}$	pounds.
A total of.....	182,719 $\frac{8}{10}$	pounds.

Of manufactured tobacco on which duty was paid by Mr. Waterman to the United States during the years 1863, 1864, 1865, and part of 1866. I also find that during the years 1863, 1864, 1865 up to the time of the seizure, that said Waterman paid the Government an excess of duty over the raw material on 39,117 $\frac{3}{10}$ pounds. And I also find on exami-

nation of the day-book kept by Mr. Waterman, from October, 1863 to April 1865, on 57 pages, 82 erasures, as follows:

On pages	1	1	erasure.	Page	6	2	erasures.
Page	10	1	"	"	11	1	"
"	17	2	"	"	21	1	"
"	21	3	"	"	24	1	"
"	25	2	"	"	26	2	"
"	29	1	"	"	31	1	"
"	35	2	"	"	39	1	"
"	43	4	"	"	47	1	"
"	49	1	"	"	51	2	"
"	56	2	"	"	58	1	"
"	64	1	"	"	65	1	"
"	66	1	"	"	67	1	"
"	73	2	"	"	76	3	"
161 Page	96	2	"	Page	111	1	"
"	130	1	"	"	138	1	"
"	143	1	"	"	177	2	"
"	184	1	"	"	190	1	"
"	192	1	"	"	194	1	"
"	197	1	"	"	201	1	"
"	207	1	"	"	210	1	"
"	214	1	"	"	215	1	"
"	218	1	"	"	223	1	"
"	235	1	"	"	253	1	"
"	255	1	"	"	258	3	"
"	262	2	"	"	263	1	"
"	266	1	"	"	267	1	"
"	271	1	"	"	274	1	"
"	276	3	"	"	277	1	"
"	283	4	"				
Total						82	

These erasures I find to have been made in minor matters, as a general thing, and in which the Government was not concerned; and I judge, from the examination of the books, that the way Mr. Waterman has kept his books has been, when an error has been made, to erase the figure and substitute the correct ones. This is a very common thing with good book-keepers to make erasures of this kind, and of daily occurrence. I have had experience as a book-keeper for 10 years and
162 upwards, and I know this to be a very common thing. From examination of Mr. Waterman's books I think it an impossibility, by an examination of them, to tell whether tobacco has been mixed, that is, putting small quantities of stem tobacco with leaf smoking tobacco, and selling the same as leaf tobacco, and returning it to Government as stem tobacco.

The whole of the above testimony objected to as incompetent by L. H. Bontell, assistant district attorney, and cross-examination waived.

SAMUEL BROOKS.

Deposition of G. F. Murtaugh.

Deposition of Geo. F. Murtaugh, taken at Chicago, Ill., before P. A. Hoyne, U. S. com., September 23rd, 1868.

What is your name, age, residence, and occupation?

My name is George F. Murtaugh. My age 26 years. I reside in

Chicago. I am a tobacconist. I was in the employ of Mr. Waterman on or about the 10th day of April, 1864; up to about April 1, 1865, as foreman in his tobacco works, No 22 Market st., Chicago, Ill. My business was to superintend the manufacture of tobacco there, and seeing that it was properly packed, and all the tobacco manufactured
163 there passed under my personal inspection. I had charge of all cutting and mixing of tobacco, and very frequently we cut stem and leaf tobacco together, making a medium grade of leaf smoking tobacco. But in every such instance where the stem and leaf were thus mixed it was always inspected as leaf smoking tobacco, and so branded by the U. S. inspector, and no other mixing of tobacco ever occurred while I was employed by Mr. Waterman at his tobacco works. Stem and leaf tobacco could not have been mixed and inspected as stem tobacco there without my knowledge, and I know that it never was done while I was there.

Testimony objected to and cross-examination waived by L. H. Bontell, assistant district attorney.

GEORGE F. MURTAUGH.

Deposition of Ja's Van Etta.

Deposition of James Van Etta, taken at Chicago, Ill., before P. A. Hoyne, U. S. com., March, 13th, 1868.

Int. 1. What is your name, age, place of residence, and occupation?

Ans. My name is James Van Etta; age 44; reside in Chicago; dealer in leaf tobacco.

164 Int. 2. Were you at any time, and when *been* engaged in the business of the manufacture, selling and buying of tobacco in a manufactured condition?

Ans. Yes, most of the time for the last twenty years in Chicago, Utica, and Syracuse, New York State.

Int. 3. Did you ever sell any manufactured tobacco to Mr. Charles H. Waterman of this city?

Ans. I believe I have.

Int. 4. When and in what quantity?

Ans. I think about 1863 or 1864. I cannot state what quantity.

Int. 5. Have you any written data by which you can get at the time and quantity?

Ans. No, sir; I have not.

Int. 6. Do you know of a class of persons known among tobacco dealers as street brokers?

Ans. I do.

Int. 7. How is the business done in making purchases by regular tobacco dealers from these street brokers?

165 Ans. By samples, same as sugars, teas, and coffees are sold.

Int. 7. Are such purchases frequently made from these street brokers who are strangers to the purchasers.

Ans. Yes, sir.

Int. 8. In making sales by these street brokers is it usual for them to make bills as is done when purchases are made by and from regular dealers?

Ans. It is done both ways. It is sometimes cash and sometimes credit; sometimes with a bill and sometimes without. I never made a purchase of a street broker without receiving a bill.

JAMES VAN ETTA.

Deposition of Louis Specht.

Deposition of Louis Specht, taken at Chicago, Ill., March 13, 1868, before Phillip A. Hoyne, U. S. commissioner.

Int. 1. What is your name, age, place of residence, and occupation?

Ans. My name is Louis Specht; age 33; place of residence 238 North La Salle st., Chicago; occupation tobacconist.

166 Int. 2. Do you know Charles H. Waterman; and if so, how long have you known him?

Ans. About five or six years.

Int. 3. Did you ever have any dealings with Mr. Waterman in the way of manufacturing tobacco for him, or selling to or buying of him tobacco in a manufactured or unmanufactured state; and if so, when did you have such dealings, and what were they, and the extent thereof?

Ans. I had some dealings with Mr. Waterman during the years 1863 & 1864. I can't tell the extent exactly; have no record; was out of business. About a year after that time, in 1865, my partner took a job to manufacture some tobacco for Mr. Waterman. I can't say the time, whether 1863 or 1864. Mr. Waterman or his agent agreed to pay the tax. It was his agent that made the arrangement for cutting this tobacco, and my partner gave the tobacco to Mr. Waterman's agent, and this agent agreed to pay the tax, but he did not, so I paid it. I think it was several thousand pounds, as near as I can recollect, of smoking tobacco; besides that, I have sold him from time to time during those years lots of smoking tobacco, amounting to between two and

167 three hundred barrels or half *half* barrels. I think the most full barrels; some half barrels, but not many. I never bought any of Mr. Waterman that I know of.

Int. 4. Do you know a class of persons, dealers in tobacco, who are called street brokers?

Ans. Yes; I do.

Int. 5. How do these street brokers transact their business, if any they do, with regular dealers in tobacco? By regular dealers I mean those who have a business house or place where they buy and sell tobacco.

(Objected to.)

Ans. Street brokers generally buy and sell on their own hooks. It is very often the case that a manufacturer or dealer has tobacco on hand which is not in very good condition. He gives it to a street broker to sell on the street to whoever he can. This has been done ever since I have been in business, (tobacco business.) By selling on the street I mean that the street brokers offer the tobacco to any person who deals in tobacco. They go from store to store and sell it for whatever price they can get for it.

168 Int. 6. Do those street brokers, in so offering tobacco for sale at the stores of regular dealers, have with them, when they offer the same for sale, the whole quantity which they so offer, or do they have mere samples; and do they sell by sample, and after that make delivery of the quantity sold, or do they make sale of an entire quantity and deliver immediately upon making the sale?

Ans. They generally take a sample with them when they offer for sale. If they make a sale by sample they deliver afterwards, within the time agreed upon. If the purchaser has not the money at the time,

a further time is agreed upon, when the tobacco shall be delivered and paid for. If the purchaser has the money on hand, the delivery is made sometimes the same day. They never take the whole quantity with them when offering and making a sale.

Cross interrogatory.

Int. 1. Are their proceedings now pending in the U. S. dist. court for this district against your tobacco establishment for alleged violations of the internal revenue laws?

(Object' to as wholly impertinent and immaterial.)

Ans. There is.

LOUIS SPECHT

Deposition of E. Frankenthal.

Depostition of E. Frankenthal, taken at Chicago, Ill., before Phillip A. Hoyne, U. S. com., March 13, 1868.

Int. 1. What is your name, age, place of residence, and occupation?

Ans. My name is E. Frankenthal; age 41, ninth of next April; reside 631 Michigan ave., corner of 18th st.; occupation tobacco and cigar dealer.

Int. 2. Do you know Cha's H. Waterman?

Ans. I do.

Int. 3. Did you ever, and when, sell Mr. Waterman any, and how much, unmanufactured tobacco; or any, and how much, manufactured tobacco?

Ans. We sold the goods as stated on exhibit hereto annexed, marked Exhibit "A," which is taken from our books before, and I do not know but after, those dates. We sold bills of tobacco, but whether manufactured or unmanufactured tobacco I cannot say. These sales were made for cash and went simply into our cash-book among other sales; cannot tell anything about the kind or quantity, or when the sales were
170 made. The person who made the sales, had a little check upon which he puts down the quantity, amount, kind, and total price. It is merely a check between the salesman and cashier, and is sent to the cashier accompanying the cash for the cashier to make up his cash accounts. These may be kept for a short time, and then thrown away or burnt up as of no use.

Int. 4. On these cash sales were bills thereof made and delivered to Mr. Waterman?

Ans. Sometimes a bill or memorandum is given, but not always; oftener not given than given. I do not recollect whether bills were given to Mr. Waterman or not.

E. FRANKENTHAL.

EXHIBIT "A."—(Duplicate.)

Mess. C. H. Waterman & Co. in ac. with E. Frankenthal & Co.

1865.				
Jan'y 27.	To 1 case leaf tobacco ✕ 457–529–83, 446, 10*c*..			44 60
31.	" 1 " " " @ 507–90–417, 10*c*.....			41 70
Mar. 6.	" 50 cigar boxes.....	8 50		
	" 50 Gen. Grant labels	55		
	" 1 quire blue paper	60		
				9 65

Nov. 24.	" 1 jar 45c.; McAboy snuff, $16\frac{5}{16}$, 75	12 75		
	" 1 bladder Scotch do $6\frac{3}{4}$, 75	5 06		
				17 87
1866.				
Jan. 4.	" 1 jar 15c.; McAboy " $6\frac{5}{16}$, 70			5 01
				$118 77

171 CR.

1865.			
Ap'l 12.	By cash	95 95	
Dec. 4.	" "	17 81	
1866.			
Feb. 5.	" "	5 01	
			$118 77

And thereupon the said Charles H. Waterman produced the said Samuel Brooks as a witness, who, being sworn, testified that he was a book-keeper and accountant, and understood the different modes of book-keeping by single and double entry. A document in writing and in figures was then handed to the witness who then testified that he made the said document, and that the same was a full and correct abstract of the books of said Charles H. Waterman, as to his tobacco business, between the dates in said document specified, and was the abstract referred to in his deposition.

And thereupon the said document was, by the said Charles H. Waterman, offered and read in evidence to said jury, and which document was and is as follows, that is to say:

Abstract of books made by Sam'l Brooks.

172 Date.		Pounds stem.	Pounds leaf.	Total stem.	Total leaf.
Nov. 30, 1863		1,657	654		
" " "		1,670	2,675		
" " "			3,605		
				3,321	6,934
Dec. 4, "		1,815			
" 7, "		115			
" " "		141			
" 24, "		530			
" 25, "			100		
" 30, "			68		
				2,601	168
Jan'y 2, 1864		1,210	622		
" " "		313	912		
" 6, "		274			
" 13, "		192			
" " "		614			
" 14, "		117			
" " "		157			
" " "		153			
" " "		109			
" 20, "		111	481		
" " "		134			
" 27, "		1,102			
				4,486	2,015
Feb'y 5, "		1,260	60		
" 10, "			885		
" 13, "		39			
" " "		358			
" 15, "		159			
" 23, "		367			
" 24, "		115			
" 27, "		178			
" " "		77			
" " "		38			
" 29, "		134			
				2,725	945

Abstract of books made by Sam'l Brooks.—Continued.

	Date.		Pounds stem.	Pounds leaf.	Total stem.	Total leaf.
March	1, "		14			
"	" "	Scraps	21			
"	" "		453			
"	1, "		2,305			
"	" "		225			
"	8, "		47			
"	9, "		198			
					3,263	
		Amounts car'd forward	16,396	10,062	16,396	10,062
173	March 9th, 1864	Amounts bro't forward	16,396	10,062	16,396	10,062
"	" 11, "		66			
"	15, "		234			
"	22, "		4,895			
"	23, "			1,522		
"	26, "		32	448		
					5,227	1,970
April	1st, 1864			1,668		
"	" "			216		
"	7 "			45		
"	11 "		508			
"	" "		109			
"	15 "		250			
"	" "		390			
"	11 "		2,144			
"	11 "		193			
"	18 "			203		
"	20 "		1,735			
					5,329	2,192
May	3rd, 1864		557			
"	12 "	4 h'h'ds, estimate 800 lbs. ea		3,200		
"	" "	5 " weight given		5,070		
"	" "	10 " " "		9,316		
"	18 "		505			
"	25 "		253			
"	28 "		595			
"	31 "		690			
					2,594	17,586
June	1st, 1864		1,000			
"	" "		1,138			
"	7 "		320			
"	" "		1,251			
"	18 "		122			
"	23 "		925			
					4,756	
		Am'ts carr'd forward	34,302	31,810	34,302	31,810
174	June 23rd, 1864	Am'ts bro't forward	34,302	31,810	34,302	31,810
"	" "		348			
"	27 "		704			
					1,052	
July	13th, 1864		233			
"	" "		230			
"	" "		184			
"	" "		169			
"	16 "		614			
"	" "		297			
"	20 "		13			
"	22 "		270			
"	" "		208			
"	23 "		39			
"	" "		206			
"	28 "		776			
"	" "		142			
"	" "		874			
"	" "		267			
"	" "		919			
"	" "		236			
"	" "		137			
					5,814	
August	1st, 1864		635			
"	" "		99			
"	2 "		157			
"	" "		174			

Abstract of books made by Sam'l Brooks.—Continued.

Date.		Pounds stem.	Pounds leaf.	Total stem.	Total leaf.
" " "		176			
" " "		24			
" 4 "		83			
" " "		19			
" 8 "		35½			
" " "		60			
" 11 "		1,087			
" " "		587			
" 12 "		25			
" " "		317			
" " "		582			
" 16 "		202			
" 17 "		12			
" " "		429			
" 19 "		198			
" " "		113			
" 22 "		44			
" " "		62			
" " "		276			
" 24 "		143			
" " "		95			
				5,634½	
	Amounts car'd forward	46,802½	31,810	46,802½	31,810
175 August 24, 1864	Am'ts bro't forward	46,802½	31,810	46,802½	31,810
Sept'ber 2, 1864		785			
" 6 "		470			
" " "		91			
" 8 "		43			
" " "		154			
" 10 "		80			
" 20 "		71			
" 24 "		109			
" " "		8			
" 26 "		161			
" 29 "		145			
				2,057	
Oct. 3rd, 1864		85			
" " "		633			
" " "		674			
" " "		360			
" " "		102			
" 5 "		231			
" " "		611			
" " "		839			
" " "		8			
" 13 "		570			
" 17 "			67		
" 20 "		391			
				4,504	67
January 10th, '65			1,152½		
" " "		217			
" 21 "		347			
" " "		157			
" 21 "		91			
" 21 "		248			
" 23 "		75			
" 24 "		560			
" " "			1,490		
" 26 "			1,290		
" " "		320	6,080		
				2,015	10,012½
	Amounts carried forward	55,378½	41,889½	55,378½	41,889½
176 Jan'y 26, 1865	Amounts bro't forward	55,378½	41,889½	55,378½	41,889½
Feb'y 4th, '65		600			
" 6 "		450			
" 8 "		176			
" 9 "		192			
" 10 "		124			
" 11 "		350			
" 15 "		110			
" 16 "		230			
" 20 "			189		
" 27 "		79			
				2,311	189

Abstract of books made by Ssm'l Bvooks.—Continued.

Date.		Pounds stem.	Pounds leaf.	Total stem.	Total leaf.
March 6, '65		240			
" " "		250			
" 18 "		325			
" " "		314			
" 23 "		57	334		
" 24 "		360			
				1,546	334
August 19th, 1865		75		75	
September 8th, "			1,065		
" " "			780		
" " "			1,585		
" " "			1,230		
" " "			1,330		
" " "			1,340		
" " "			1,165		
" " "			970		
" " "			1,335		
" 11 "			1,325		
" 11 "			1,140		
" 11 "			1,155		
" 11 "			990		
" 11 "			1,050		
" 11 "			1,345		
" 11 "			1,100		
" 11 "			1,120		
" 11 "			1,045		
" 11 "			1,612		
					22,682
	Am'ts car'd forward	59,310½	65,094½	59,310½	65,094½
177 Sept. 11th, 1865.	Amounts brought forward	59,310½	65,094½	59,310½	65,094
Oct. 14th, 1865.		220			
" " "		265			
" " "		345			
" 20 "		420			
" 24 "		1,865			
" 25 "		2,097			
" 26 "		302			
" " "		150			
" 30 "		460			
				6,124	
Nov. 10 "		290			
" 16 "		75			
" " "		170			
" 24 "		6,055			
				6,590	
Dec. 11 "		150			
" 14 "			970		
" 14 "		610			
" 18 "		130			
" " "		305			
" 20 "		55	130		
" 22 "			73½		
" " "		2,350			
" " "		495			
				4,095	1,173½
Jan'y 8th, 1866		469		460	
Febr'y 1st, 1866		755		755	
		77,334½	66,268	77,334½	66,268

178 Feb'y 1st, 1866. Total raw material. 143, 602½ pounds.
Purchased as above:

1863	13, 027 lbs.	
1864	71, 216½ "	
1865	57, 144 "	
1866	1, 215 "	
		143, 602½ pounds.

1863. Am't total duty paid	19, 852		pounds.
1864. " " " "	86, 218		"
1865. " " " "	76, 649 $\frac{8}{10}$		"
		182, 719 $\frac{8}{10}$	pounds.
Less total purchased		143, 602½	pounds.
Paid excess over raw material		39, 117 $\frac{3}{10}$	pounds.

And further to maintain the said issues on the part and behalf of the said Charles H. Waterman, he, the said Charles H. Waterman, offered and read in evidence his account books, and the same account books referred to by the witnesses, C. R. Field and Samuel Brooks, and which books are hereto annexed, and marked "Exhibit 1, B," "Exhibit 2, B," "Exhibit 3, B."

And the foregoing was all the evidence produced to said jury on the aforesaid trial.

Said cause was then argued by counsel, as well on the part and behalf of the United States as on the part and behalf of the said Charles H. Waterman.

179 And thereupon the said district judge, among other things, charged the said jury, "That it was alleged by the district attorney, in behalf of the Government, as tending to make out the case for the U. S., that Mr. Waterman, the claimant, had not kept correct and honest accounts of his tobacco transactions; that erasures had been fraudulently made in his books, and entries made showing a sale of a less quantity of manufactured tabacco than the amount he actually sold, and a less quantity than appeared by the original entries which had been erased. And as bearing on this point it would be for the jury to determine whether Mr. Waterman did or did not keep correct and honest accounts of his tobacco transactions. If he intentionally kept an incorrect or untrue account, showing that he sold less quantities of tobacco than he actually sold, then I think that would be material upon the issue."

To the giving of which instruction so in charge to the said jury, the said Charles H. Waterman, by his proctor, J. H. Knowlton, did then and there except.

And the said judge did then and there further charge the said jury, "That certain erasures have been made in Mr. Waterman's books is not contested, but Mr. Waterman has attempted to explain them, and to show that the first entries were wrong, and it is for you to say,

180 from the evidence, whether these erasures have been satisfactorily explained. The law required Mr. Waterman to keep correct accounts of his tobacco transactions, and it was his duty to do so. Of course he would not be subject to any penal consequences for unintentional error or innocent mistakes in keeping his books. The law applicable to this case is of a highly penal character, and you should be clearly satisfied, by the evidence, of the guilt of Mr. Waterman, or you

should find in his favor. In other words, the case upon the whole evidence must be clearly made out, or your verdict should be against the Government.

"You will be permitted, by agreement, to take to your room the evidence, as it is all documentary, or in the form of depositions, together with Mr. Waterman's books, and you should examine the whole carefully, and deliberately, before coming to a conclusion."

And upon the evidence and instructions aforesaid the said cause was submitted said jury, and thereupon the said jury retire to their room to consider of their verdict. And afterwards, and on the sixteenth day of January, in the year of our Lord eighteen hundred and sixty-nine, the said jury returned into court a sealed verdict.

181 And which verdict is in the words following, that is to say:

We, the jury, find the claimant, Charles H. Waterman, guilty.

And the same was signed by all the jurors.

And when the verdict was opened in court the district attorney moved to amend the verdict, and it was accordingly amended, with the consent of the jury, but without the consent of the defendant, & to which he then and there excepted, and the amended verdict was entered as it now appears of record.

And thereupon afterwards, and before judgment, the said claimant, Charles H. Waterman, moved the said district court to set aside the said verdict and grant a new trial, for the following reasons, to wit:

1st. For that the court erred in its charge to the jury in those particulars as to which the said Waterman excepted.

2nd. For that there was no evidence before the jury upon which the verdict can be sustained.

3rd. For that the verdict is against law and evidence.

4th. Because the trial was had solely upon the information and the answer of the said Charles H. Waterman, whereas by the law of
182 the land the trial should have been had, and the verdict of the jury should have been rendered at the same time upon the said information, and the answer of the Bank of Montreal, and of Matthias Clump.

5th. For that the verdict is not responsive to any fact alleged in the said information.

6th. For that there was no issue of fact before the jury to respond to by verdict.

7th. Because the verdict is uncertain, evasive, argumentative, and in no way in conformity to, or warranted by, law.

And which motion was afterwards, and on the third day of July, in the year of our Lord eighteen hundred and sixty-nine, overruled by the said district court.

The Bank of Montreal and Matthias Clump did not file any pleas denying the allegations of fraud, but merely claimed to have liens on the property.

The court heard their claims about the time of their being filed, & decided that they had no rights in the property which would prevent its being forfeited if the frauds charged in the information were true.

Said claimants, by their att'ys, were notified of the taking of testi-
183 mony in this case, but declined to take any part in the trial of the case, and never afterwards appeared therein.

Exceptions allowed.

THOMAS DRUMMOND. [SEAL.]

(Endorsed:) Filed July 3rd, 1869.

W'M H. BRADLEY, *Clk.*

On this day, to wit, the thirteenth day of July, A. D. 1869, came C. H. Waterman, claimant herein, and filed in said clerk's office his bond for appeal in the above entitled cause, which said bond is in the words and figures following, to wit:

Bond.

UNITED STATES OF AMERICA:

District court of the United States for the northern district of Illinois.

Know all men by these presents that we, Charles H. Waterman, as principal, and Charles F. Remick, as surety, of the city of Chicago, in the county of Cook, and State of Illinois, are held and firmly bound unto "The United States" in the sum of five hundred dollars, to be paid
184 to the "United States;" to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated this twelfth day of July, in the year of our Lord eighteen hundred and sixty-nine.

The condition of this obligation is such, that whereas the said The United States hath recovered a judgment in the district court of the United States for the northern district of Illinois, against and of forfeiture of Two Hundred and Thirteen Kegs of Fine-cut Chewing Tobacco, four boxes of fine-cut chewing tobacco, thirty-six and one-half barrels of leaf smoking tobacco, sixteen barrels of stem smoking tobacco, three kegs of stem smoking tobacco, four kegs of killikinick smoking tobacco, one box of killikinick smoking tobacco, one lot of loose stem smoking tobacco containing about 1,500 pounds, one other lot of loose stem smoking tobacco containing about 600 pounds; also, one and one-half hogsheads of leaf tobacco, one and one-half barrels of liquorice, fifteen hundred pounds of tobacco stems, and twenty-five kegs of the kind of tobacco known as shorts; also, one steam-engine with boiler
185 and shafting, one grindstone, two Rogers' tobacco cutting-machines, two tobacco presses and boxes, three hundred and ninety-nine tobacco cans, nine wooden tobacco caddies, nineteen new tobacco kegs, one stem tobacco roller, one lot of tobacco drying-frames, one steam-pipe, and one tobacco steam-box, as to which property the said Charles H. Waterman intervened as claimant, and as such, answered the libel or information of The United States in said cause, which judgment of forfeiture was rendered on the third day of July, in the year of our Lord eighteen hundred and sixty-nine:

And whereas the said Charles H. Waterman, claimant of said property, in order to obtain a reversal of the same judgment, hath sued out a writ of error to the circuit court of the United States for the seventh circuit and northern district of Illinois:

Now, therefore, if the above-named Charles H. Waterman shall prosecute his said writ of error to effect, and shall answer and pay all costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall remain in full force and virtue.

C. H. WATERMAN. [L. S.]
C. F. REMICK. [L. S.]

Executed and delivered in presence of—
J. H. KNOWLTON.

(Endorsed:) Approved.

THOMAS DRUMMOND.

Filed July 13th, 1869. W'm H. Bradley, cl'k.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the district court of the United States for said district, do hereby certify the above and foregoing to be a true, correct, and complete transcript of the record of all the proceedings had in said court in said entitled cause, wherein The United States are libelants, and the said Three Hundred and Thirteen Kegs of Fine-cut Chewing Tobacco and other property are respondents, as the same appears of record remaining in my custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said district court, at Chicago, in said district, this thirty-first day of July, A. D. eighteen hundred and sixty-nine, and of our independence the ninety-fourth year.

[SEAL.] W'M H. BRADLEY,
Clerk.

[5-ct. U. S. rev. stamp.]

187 *Writ of error.*

District court of the United States, northern district of Illinois.

The United States of America to the judges of the district court of the United States for the northern district of Illinois, greeting:

Because, in the record and proceedings, and also in the rendition of a judgment in a plea which is in the said district court before you, between The United States of America, libellants, against Two Hundred and Thirteen Kegs of Fine-cut Chewing Tobacco, four boxes of fine-cut chewing tobacco, thirty-six and one-half barrels of leaf smoking tobacco, sixteen barrels of stem smoking tobacco, three kegs of stem smoking to-
188 bacco, four kegs of killikinick smoking tobacco, one box of killikinick smoking tobacco, one lot of loose stem smoking tobacco containing about 1,500 pounds, one other lot of loose stem smoking tobacco containing about 600 pounds; also, one and one-half hogsheads of leaf tobacco, one and one-half barrels of liquorice, fifteen hundred pounds of tobacco stems, and twenty five kegs of the kind of tobacco known as shorts; also, one steam-engine with boiler and shafting, one grindstone, two Rogers' tobacco cutting-machines, two tobacco presses and boxes, three hundred and ninety-nine tobacco cans, nine wooden tobacco caddies, nineteen new tobacco kegs, one stem tobacco roller, one lot of tobacco drying-frames, one steam-pipe, and one tobacco steam-box, respondent, and Charles H. Waterman, claimant of said property, a manifest error hath happened, to the great damage of the said Charles H. Waterman, claimant, as by his complaint appears; and, it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your
189 seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the circuit court of the United States for the northern district of Illinois, together with this writ, so that you have the same at Chicago, in said district, on the first Monday of October next, in the said circuit court, to be then and there held, that, the record and proceedings being inspected, the said circuit court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this fifth day of July, in the year of our

Lord one thousand eight hundred and sixty-nine, and of our independence the ninety-fourth year.

[SEAL.] W'M H. BRADLEY,
Clerk.

190 UNITED STATES OF AMERICA, *ss:*

To the United States and to Joseph Otis Glover, esq., district attorney of the United States for the northern district of Illinois, greeting:

You are hereby cited and admonished to be and appear at a circuit court of the United States for the seventh circuit and northern district of Illinois, to be holden at the United States court-room, in the city of Chicago, in the county of Cook, and State of Illinois, on the first Monday in October next, pursuant to a writ of error filed in the clerk's office of the district court of the United States for the northern district of Illinois, wherein Charles H. Waterman is plaintiff in error, and the United States is defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Thomas Drummond, one of the judges of the circuit court of the United States for the seventh circuit and northern district of Illinois, this 13th day of July, A. D. 1869.

THOMAS DRUMMOND.

191 (Endorsed:) Filed July 31st, 1869. W'm H. Bradley, clerk.

On this day, to wit, the 8th day of July, in the July term, A. D. 1870, of said circuit court, in the record of the proceedings thereof in said entitled cause, is the following entry, to wit:

Cause heard in circuit court.

THE UNITED STATES
vs.
TWO HUNDRED AND THIRTEEN KEGS OF FINE-cut Chewing Tobacco and other property. } Appeal.

Now come the parties, by their attorneys, and thereupon this cause is set down for hearing upon the record from the district court filed herein; and, after hearing the arguments of counsel, the court, not being sufficiently advised in the premises, takes time to consider.

On this day, to wit, the thirteenth day of July, in the July term, A. D. 1870, of said circuit court, in the record of the proceedings thereof in said entitled cause, is the following entry, to wit:

192 *Judgment in circuit court.*

THE UNITED STATES
vs.
TWO HUNDRED AND THIRTEEN KEGS OF FINE-cut Chewing Tobacco, and other property. } Appeal.

The court, having considered and being now fully advised upon the matters heretofore submitted herein, affirms the decree of the district

court herein. And, it appearing from the record that a judgment was rendered in the district court, on the third day of July, A. D. eighteen hundred and sixty-nine, in favor of the United States, for the sale of the goods and property seized by virtue of the process therein, and which sale amounted to the sum of two thousand nine hundred dollars and ninety-one cents damages and costs:

It is thereupon ordered, adjudged, and decreed by the court that the goods and property seized by virtue of the process of the district court herein be forfeited and condemned to the United States, and that the proceeds thereof, now in court, amounting to the sum of two thousand and nine hundred dollars and ninety-one cents, be distributed
193 according to the rules and practice of the court, and that the respondent pay the costs herein.

And it is further ordered by the court that a summary judgment be, and the same is hereby, accordingly entered against Charles H. Waterman as principal, and Charles F. Remick as surety, in the sum of five hundred dollars, being the amount of the bond given on the appeal from the decree of the district court; and that the United States have execution therefor, to wit, for the sum of five hundred dollars, to be satisfied and discharged upon the marshal making thereon the amount of the costs herein.

194 On this day, to wit, the 22d day of July, A. D. 1870, there was filed in said clerk's office the bond on appeal of said claimant in said-entitled cause, which said bond is in the words and figures following, to wit:

Appeal bond.

Supreme Court of the United States.

TWO HUNDRED AND THIRTEEN KEGS FINE-cut Chewing Tobacco, and other property, claimant, Charles H. Waterman, plaintiff in error,
vs.
THE UNITED STATES, DEFENDANT IN ERROR.

Know all men by these presents that we, Charles H. Waterman and Charles F. Remick, of the city of Chicago, in the county of Cook, and State of Illinois, are held and firmly bound unto the United States in the sum of five hundred dollars, to be paid to the United States;
195 to which payment, well and truly to be made, we bind ourselves, and each of us, and our and each of our heirs, executors, and administrators firmly by these presents, sealed with our seals, and dated this twenty-second day of July, in the year of our Lord eighteen hundred and seventy.

Whereas the above-named Charles H. Waterman has prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment of the circuit court of the United States for the northern district of Illinois, wherein The United States was plaintiff, and Two Hundred and Thirteen Kegs of Fine-cut Chewing Tobacco and other property was defendant, and the said Charles H. Waterman was a claimant thereof:

Now, therefore, the condition of this obligation is such, that if the above-named Charles H. Waterman shall prosecute his said writ of

error to effect, and answer all damages and costs if he fail to make good his plea, then this obligation shall be void; otherwise the
196 same shall be and remain in full force and virtue.

CHARLES H. WATERMAN. [L. S.]
CHARLES F. REMICK. [L. S.]

Approved.

H. W. BLODGETT, *Judge.*

(Endorsed:) Filed July 22, '70. W'm H. Bradley, cl'k.

197 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for the northern district of Illinois aforesaid, do hereby certify the above and foregoing to be a true and correct and complete transcript of the record of all the proceedings had in said court in said entitled cause, wherein the said The United States are plaintiffs, and the said Two Hundred and Thirteen Kegs of Fine-cut Chewing Tobacco and other property are respondents, as the same remains of record in my custody.

In testimony whereof I have hereunto set my hand and affixed the seal of the said circuit court at my office, in the city of Chicago, in said district, this third day of December, A. D. eighteen hundred and seventy, and of our independence the ninety-fifth year.

[SEAL.] W'M H. BRADLEY, *Clerk.*

[5c't int. rev. stamp canceled.]

198 Circuit court of the United States, northern district of Illinois.

The United States of America to the judges of the circuit court of the United States for the northern district of Illinois, greeting:

Because, in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said court before you, between The United States of America, plaintiffs, against Two Hundred and Thirteen Kegs of Fine-cut Chewing Tobacco, four boxes of fine-cut chewing tobacco, thirty-six and one-half barrels of leaf smoking tobacco, sixteen barrels of stem smoking tobacco, three kegs of stem smoking tobacco, four kegs of killikinick smoking tobacco, one box of killikinick smoking tobacco, one lot of loose stem smoking tobacco containing about 1,500 pounds, one other lot of loose stem smoking tobacco containing about 600 pounds; also, one and one-half hogsheads of leaf tobacco, one and one-half barrels of liquorice, fifteen hundred pounds of
199 tobacco stems, and twenty-five kegs of the kind of tobacco known as shorts; also, one steam-engine with boiler and shafting, one grindstone, two Rogers' tobacco cutting-machines, two tobacco presses and boxes, three hundred and ninety-nine tobacco cans, nine wooden tobacco caddies, nineteen new tobacco kegs, one stem tobacco roller, one lot of tobacco drying-frames, one steam-pipe, and one tobacco steam-box, respondent, and Charles H. Waterman, claimant of said property, a manifest error hath happened to the great damage of the said Charles H. Waterman, claimant, as by his complaint appears, and it being fit that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and

proceedings aforesaid with all things concerning the same to
200 the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that, the record and proceedings being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this fifteenth day of July, in the year of our Lord one thousand eight hundred and seventy, and of our independence the ninety-fifth year.

[SEAL.] W'M H. BRADLEY, *Clerk.*

(Indorsed:) Circuit court U. S. northern district of Illinois. The United States vs. 213 Kegs Fine-cut Chewing Tobacco, &c., & Cha's H. Waterman, claimant. Writ of error.

201 UNITED STATES OF AMERICA:

Circuit court of the United States for the northern district of Illinois.
July term, 1870.

THE UNITED STATES
vs.
213 KEGS FINE-CUT CHEWING TOBACCO, &C.,
Charles H. Waterman and others, claimants.

And now comes the said Charles H. Waterman, by his attorney, J. H. Knowlton, and says that in the record and proceedings aforesaid, and in the judgment aforesaid, there is manifest error in this:

That it appears by the record aforesaid, that the cause was tried on the said information and the claim of the said Charles H. Waterman alone; whereas the jury should have been charged with the trial of all the claims interposed.

There is also error in this, that the verdict find even all the facts put in issue by the answer of the said Waterman.

There is also error in this, that no fact put in issue was found by the said verdict, and the same is wholly uncertain and void.

202. There is also error in this, that the sealed verdict returned was amended without the consent of the said Waterman.

There is also error in the first instruction given in charge to said jury.

There is also error in this, that the judgment does not state that the property adjudged forfeited was at any time in the possession of any one for the purpose of being removed or disposed of to evade the payment of duties thereon, or in fraud of the revenue laws of the United States, or any cause of forfeiture whatever, and the same is otherwise erroneous. And the said Waterman prays, that the judgment aforesaid may be, for the errors aforesaid, and other errors appearing in the record and proceedings aforesaid, in all things reversed.

J. H. KNOWLTON,
Att'y for Waterman.

Indorsed 9426—838. Circuit court U. S. The United States vs. 213 Kegs Fine-cut Chewing Tobacco &c. C. H. Waterman et al claimants. Assignment of errors. Filed July 8, 1870. W'm. H. Bradley, cl'k. Knowlton, att'y.

203 UNITED STATES OF AMERICA, *ss.*

To the United States, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the northern district of Illinois, wherein Two Hundred and Thirteen Kegs Fine-cut Chewing Tobacco and other property, claimed by Charles H. Waterman, are plaintiff in error, and The United States are defendants in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness, the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this first day of September, in the year of our Lord one thousand eight hundred and seventy.

H. W. BLODGETT, *Judge.*

204 OCT. 1, 1870.

I accept service of the within citation.

J. O. GLOVER,
U. S. Att'y Nor. Dist., Ill.

205 UNITED STATES OF AMERICA, *ss:*

Supreme Court of the United States, to the December term, A. D. 1870.

TWO HUNDRED AND THIRTEEN KEGS OF FINE-cut Chewing Tobocco and other property, Charles H. Waterman, claimant, plaintiff in error.
vs.
THE UNITED STATES, DEFENDANT IN ERROR.

The said plaintiff in error saith that in the record and proceedings mentioned in the writ of error herein, as will appear by the transcript returned to said writ, divers great and manifest errors appear, to wit:

(1.) Neither the district nor the circuit court ever acquired jurisdiction of the subject-matter of the suit.

(2.) The information is insufficient, and should have been dismissed.

(3.) The charge of the court was calculated to mislead the jury.

(4.) The charge of the court was contrary to law.

(5.) The verdict of the jury, "We, the jury, find the defendant, Waterman, guilty," should not have been changed.

(6.) No judgment could be rendered upon the verdict.

(7.) The court should have restored the property to the claimant.

(8.) The judgment is against law.

(9.) The judgment is against the evidence.

(10.) The matters charged in said information, are charged as crimes, and this prosecution was brought for the penalty for crime. No
206 man can be deprived of his property as a penalty for crime but by the judgment of his peers according to due course for the common law.

No man's property can be forfeited as a punishment for crime by statute. And no proceeding in rem to enforce such forfeiture can be maintained.

The seizure, information, trial, and condemnation by the said judgment and proceedings are forbidden by the supreme law of the land, and are void.

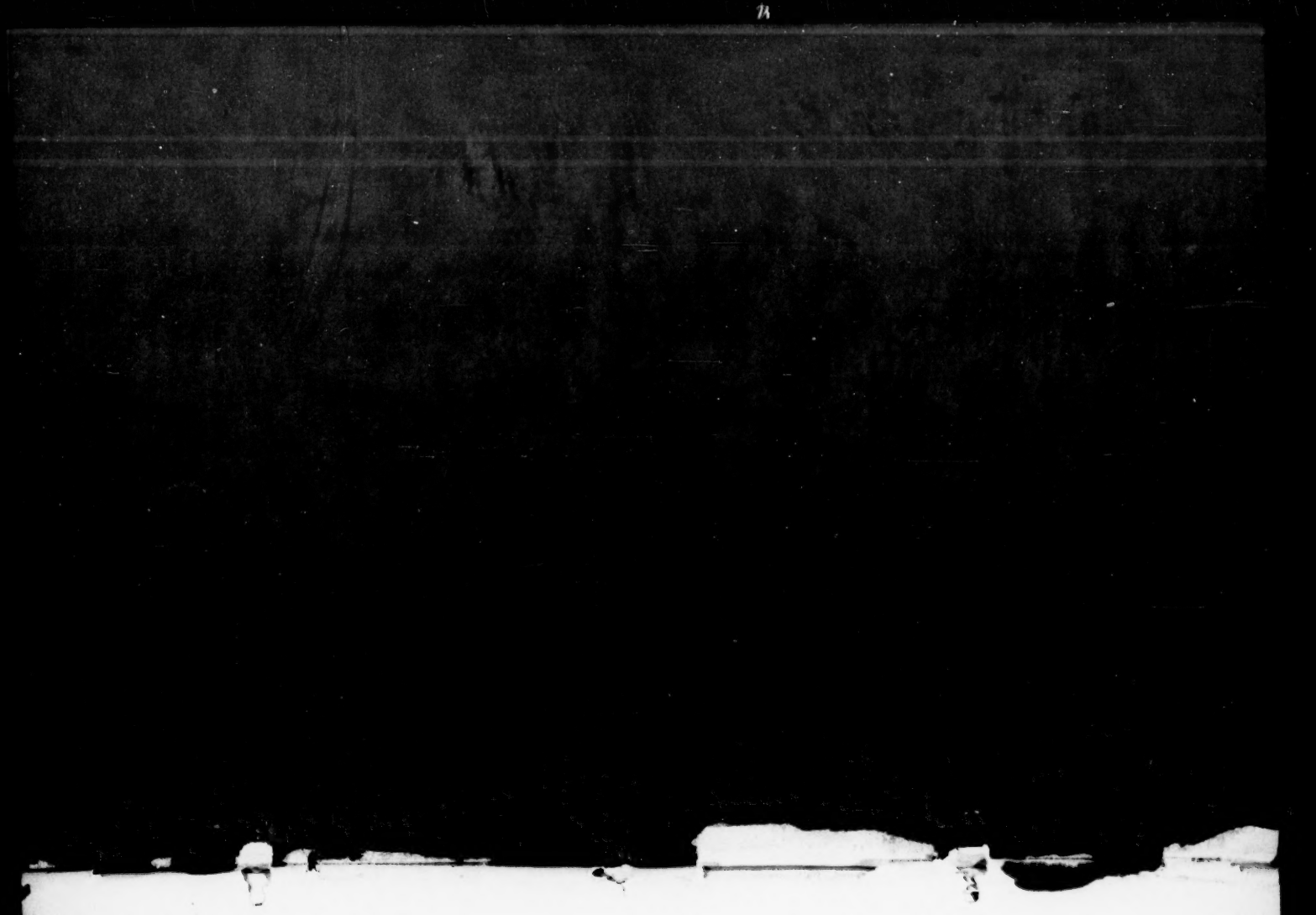
Wherefore, the said plaintiff in error, prays that the said judgment may be reversed, and the said proceedings may be quashed.

For 213 Kegs Fine-cut Chewing Tobacco and other property.

CHARLES H. WATERMAN,
Claimant, Plaintiff in Error.

U. S. Supreme Court. 213 Kegs Fine-cut Chewing Tobacco & Charles H. Waterman, claimant, pl'ff in error, v. The United States, defendant in error. Assignment of errors.

(Indorsement on cover:) No. 391. Two Hundred & Thirteen Kegs of Fine-cut Chewing Tobacco, &c., Charles H. Waterman, plaintiff in error, vs. The United States. N. Illinois C. C. U. S. Filed 12th December, 1870.



SUIT IN REM FOR CRIME.

No. 183.

BRIEF FOR PLAINTIFF IN ERROR.

Supreme Court of the United States.

213 KEGS OF FINE CUT CHEWING TOBACCO ETC.

CHARLES H. WATERMAN, PLAINTIFF IN ERROR,

v.

THE UNITED STATES, DEFENDANT IN ERROR.

EDWARD ROBY, COUNSEL.

JOLIET REPUBLICAN PRINT, JOLIET, ILLINOIS.

BRIEF FOR PLAINTIFF IN ERROR.

Supreme Court of the United States

No. 183.

213 *Kegs of Fine Cut Chewing Tobacco, Etc.*

CHARLES H. WATERMAN, PLAINTIFF IN ERROR.

v.

THE UNITED STATES, DEFENDANT IN ERROR.

Error to U. S. Circuit Court, Northern District of Illinois.

This was a suit *in rem* for forfeiture, for breach of internal revenue law.

February 5, 1866, at Chicago, George Schneider, revenue collector, seized the machinery and the manufactured and unmanufactured stock of a manufacturer and vender of tobacco.

More than a month thereafter, March 6, 1866, the District Attorney of said district filed an information in the district court saying that this had been seized as forfeited to the use of the United States, and such person or persons as might be entitled to a moiety, (marg. p. 5,) praying for process against the property, to enforce the forfeiture, and that notice be given to all parties in interest. (p. 9.)

The information contains three counts:

(1.) Against the manufactured tobacco, because, as is said, this manufacturer and vender intended to sell it without paying the taxes.

(2.) Against the unmanufactured tobacco, because, as is said, this manufacturer and vender intended to manufacture it into articles on which taxes would be imposed—for the purpose of being sold by him without paying the taxes.

(3.) Against the steam engine and implements, because, as is said, somebody intended that this manufacturer and vender should

use them in the manufacture of articles which he then intended to make, and which, after they should be made, he intended to sell, and on which he then did not intend to pay the taxes when he should carry out his other intentions.

Thereupon a monition issued (marg. p. 10.) to the marshal, commanding him to attach these things and detain the same in his custody, and to give to all persons interested notice of the suit by publication in a daily newspaper, and by notice posted up in the most public manner. "And what you shall have done in the "premises, do you then and there make return, together with this "writ."

Marg. p. 12. The marshal made full return of his attachment, seizure, and detention of the property, but said only this, as to the notice, "and I have also given due notice by publication and posting up according to the command of said writ."

Accompanying this return is a notice with certificate of publication, in a newspaper, by the publisher thereof.

There is no copy of any notice posted and no proof of posting any notice in any manner.

Top pages 7 and 16: divers parties appear as claimants of liens upon the property.

This manufacturer and vender (the plaintiff in error) also appeared and claimed the ownership, (marg. p 24).

These parties gave bonds for costs, (required by statute as prerequisite conditions of liberty to defend,) (top pages 15-19).

Top page 21. On motion of the District Attorney a portion of the property, consisting of machinery and implements only, was ordered to be sold as perishable, and the proceeds paid into court. As no other order of sale was made, it appears that this portion of the seizure was sold for $2,900.90. It appears also that all the tobacco seized has been stolen by the marshal or through his custody, for the judgment omits it altogether; of its value there is no direct proof in the record except the sworn answer of the Bank of Montreal, from which it appears that that institution had considered a portion of it as sufficient secu. ity for loans amounting to over $10,500.00. (Top page 16–19).

Top page 22. The issue was heard by eleven jurors who could not agree; and (p. 23) by twelve jurors who agreed in this verdict, and under the order of the court signed and sealed it, and separated: (Marg. pp 60 and 181), "We, the jury, find the claimant, Charles H. Waterman, guilty."

Afterwards the District Attorney "moved to amend the verdict" and the same was "amended" at his dictation "*with the consent of the jury*," is the mild way of stating the way in which a new verdict was obtained.

This new verdict rendered in court, without consultation, after

sealing and dispersal, was entered—"We, the jury, find for the United States."

Thereupon final judgment was entered (marg. p. 62); a bill of exceptions made up, (top pp. 25–72); the case was taken by writ of error to the circuit court, (pp. 73–75). The errors there assigned are misplaced in the record, and are found at marg. p. 201.

Judgment of affirmance was entered in the Circuit Court at the July term 1870, (marg. p. 192,) and a summary judgment in personam against Waterman for costs.

A writ of error to remove the cause to this court, together with the transcript of the record, the appearance of defendant in error and the assignment of errors, was filed in this court on or before the tenth day of the December term, A. D. 1870.

The evidence found in the Bill of Exceptions is (I believe) so far as relates to the offences charged in this information entirely circumstantial. If it shows anything, it shows that Waterman had committed perjury, and had committed other offences against the revenue laws.

ERRORS ASSIGNED.

(1.) Neither the district nor the circuit court ever acquired jurisdiction of the subject matter of the suit.

(2.) The information was insufficient and should have been dismissed.

(3.) The charge of the court was calculated to mislead the jury.

(4.) The charge of the court was contrary to law.

(5.) The verdict of the jury—"We, the jury, find the defendant, Waterman, guilty," should not have been changed.

(6.) No judgment could be rendered upon the verdict.

(7.) The court should have restored the property to the claimant.

(8.) The judgment is against law.

(9.) The judgment is against the evidence.

(10.) The matters charged in said information are charged as crimes, and this prosecution was brought for the penalty of crime. No man can be deprived of his property as the penalty of crime, but by the judgment of his peers according to due course of the common law. No man's property can be forfeited by statute as a punishment for crime; and no proceeding in rem to enforce such forfeiture, can be maintained. The seizure, information, trial and condemnation by the said judgment, and proceedings are forbidden by the supreme law of the land, and are void.

ARGUMENT.

When called into this case, notwithstanding the assertions of Mr. Waterman that he was entirely innocent of fraud, and that the testimony of Mr. Field, and his accomplices, in the interest of the informers was not only corrupt, but was insufficient to sustain the verdict—I believed the case hopeless on any theory upon which it had been contested. The jury had rendered a verdict and it had been affirmed in the circuit court, and I supposed the case exhibited a perfect record of condemnation by suit in rem for forfeiture, for breach of the revenue law. On that basis it was taken, the questions arising on the tenth error being the only ones to be tested. With regret I found errors nearer the surface and am compelled to present them, by the principle, that a client's whole case must be presented.

I.

In a suit in rem the court must have jurisdiction to render judgment against the thing. A judgment against a thing binds the thing or it does not; if the court had jurisdiction to adjudicate upon the cause of action and against the thing it is valid, if not it is void. Jurisdiction to adjudicate upon such a cause of action and against a thing is of necessity a creation of statute (except in admiralty): a summary proceeding without personal service to cut off the day in court and divest the property of one man and transfer it to another. Such proceedings derive their validity only from the law, and can be valid only when in precise conformity with the law which gives them their existence; without the law they do not exist. In such proceedings the requisites of jurisdiction cannot be presumed nor made out by intendment, they are void every where; but this is doubly true, in a direct proceeding for reversal, in which upon every question of jurisdiction in every case the rule has been familiar to this court from 1793 (2 Dallas) "Quod non apparet "non est."

Pursuant to the statute as a pre-requisite to the power to condemn the property or adjudicate upon the cause of action the court commanded the Marshal to give notice to all persons "by notice "posted up in the most public manner, for the space of fourteen days, "at or near the place of trial, of such seizure and information," and of the time of trial thereof.

The Marshal said he had given due notice:—but *that*, was for the court to judge on inspection of the notice itself or a copy thereof. He said he had given it by posting up according to the command of his writ; it was to be posted up for the space of fourteen days, was to be at or near the place of trial; was to be posted in the most public manner, and was to contain notice of certain things. None of these things ever appeared to the court; the court never

adjudged upon any evidence or facts presented. And while the manner pointed out by the statute and the command were of the very essence of the power to adjudge the subject matter, the mere ministerial officer assumes the power to adjudge upon his own action and to decree that the services he had performed constituted *due notice* and *accordance* with the command. Of what he has done he makes no return.

Some persons appeared. But (1) appearance of parties cannot confer jurisdiction on a court where jurisdiction of the subject matter is not given by law; (2). Neither the allegations of the information nor the oaths of the claimants can prove ownership or forfeiture:—in suits in rem all the world are parties; and till all the world have been brought in by due process the voluntary appearance of a few will not take away from the proceeding its exparte character and authorize a final judgment against the thing; and if the judgment cannot bind the thing, it is void. (3.) A proceeding inter partes after the thing is in court, to marshal or distribute the assets, is merely incidental to jurisdiction to condemn the thing, and no mere incident can exist prior to or survive the principal.

II.

Second error. The information is insufficient, and should have been dismissed.

A bare intention cannot be a crime against human law; nor can it be detected or punished by human tribunals. Divinity alone can discern the thoughts and intents of the heart. In his sight: he that hateth his brother without a cause is a murderer, and he that looketh on a woman to lust after her is guilty of the crime of adultery; but to what human tribunal could a man submit for such a trial? What vision would not be jaundiced or blind? What heart would try, and a true verdict give, according to the evidence—no more nor less?

This manufacturer and vender committed no crime in having raw stock to use, nor in having manufactured stock, nor in having implements for manufacture. He could not exist as a manufacturer and vender without them. Yet, if they were forfeited by reason of the bare intent, and became the property of the United States, and an informer, subsequent repentance and payment by him, could not divest that property and restore it to him. If the intention was a crime punishable by law, no subsequent intention could change the status of the criminal. The crime has been committed and is complete. But there is the point:—intention alone is always inchoate—never complete till executed.

III.

The third, fourth and fifth errors come together. The jury understood that they were examining the depositions, Waterman's books and his sworn returns, to ascertain whether he was liable to penal consequences for false and perjured returns, and their verdict upon that charge was, "guilty." One thing is evident; one amendment every man will make who reads the record, and will read the verdict in the words returned by the scotch jury on a trial for murder, "Guilty, but we are not certain that this is the "man." The assessor, his chief clerk, the United States commissioner and district attorney were undoubtedly guilty of conniving at the evasion of criminal process, that they might obtain the property of the criminal. Damning proof that they knew of these crimes of fraud and perjury, and did not raise their fingers in the line of duty, to bring the criminal to justice, comes from their own mouths. That they did not indict him is evident, because the jury, upon conviction, would have assessed the penalties, and upon acquital would have delivered him from all consequences of the crime. If Waterman's story of his innocence is true, they knew the jury would not have believed Mr. Field if a days' imprisonment was to follow their verdict; therefore they chose this proceeding, knowing that however carefully the Judge might word the charge, no jury would appreciate their doubts in such a mere civil suit (as they call it) one-tenth as keenly as if they knew that their verdict was to be followed by the blasted life, the imprisonment, the felon's name, and his family's disgrace, and all the dreadful consequences that follow upon conviction of infamous crime. Enough appears of record to show that this was the scheme of the conspiracy, and that the charge of the court misled the jury to falling into the trap. That these officers did not intend to indict the man, is apparent also, because the verdict would have delivered him from the penalty.

Now for the change of the verdict. The jury having considered other crimes by the express direction of the court, and found thereon the verdict of guilty, and separated; come together the following day to see the verdict opened, and are told that they have made fools of themselves; that they had not understood what they were trying; that they were not trying anyone for guilt, and they must give another verdict:—That they did not change their verdict without being told the first one was wrong, with an explanation which amounts to the above, is as clear as the fact that they changed it—for they would not have changed it without a strong reason; and in their chagrin they jumped at the dictation of the district attorney, and *consented* to the entry of another verdict—mark: it was not their own verdict; it was prepared by a party, and they *only consented.*

The 7th, 8th, and 9th errors alleged, will receive from me no other argument than is found under other points. If the main point of this writ of error is sustained of necessity, the judgment is against law and without evidence, and the property should be restored, "instantly" is the word used in *Lindo* v. *Rodney*, 2 Douglas, 616.

IV.

The tenth error is thus written: The matters charged in said information are charged as crimes, and this prosecution was brought for the penalty for crime. No man can be deprived of his property as a penalty for crime, but by the judgment of his peers according to due course of the common law. No man's property can be forfeited as a punishment for crime by statute. And no proceeding *in rem* to enforce such forfeiture can be maintained. The seizure, information, trial and condemnation by the said judgment and proceedings are forbidden by the supreme law of the land, and are void.

It has been claimed that these forfeitures were not penalties for crime, but only constituted an unfortunate condition of the property without reference to who had been its owner. Had not this been asserted by Circuit Courts that ought to be entitled to my respect, a single word would dispose of the position. As it is, I will proceed as if with respect for the intellect which should propound such a claim.

All forms of expression name the forfeited articles as property. What is property? Blackstone says, (p. 135) "The original of "private property is probably found in nature, * but certainly the "modifications under which we at present find it, the methods of "conserving it in the present owner, and of translating it from man "to man, are entirely derived from society." Hence it follows from the term itself that all property must have an owner, and the ownership cannot be divested from one and transferred to another without some course or process deriving its source in the institutions and practice of society. This property had an owner; by the usages of society it would have been conserved in him unless voluntarily transferred by him by sale or gift, or surrendered to cancel his debts. Without the intervention of any such process or step, it is said that the ownership has been or is to be taken from him and transferred to two joint owners, who sue in the name of one for the joint interest of both, and the process by which the transfer is effected is a statute; not as a penalty for crime, but as the simple and bare operation of the statute. Without the statute the property would have been conserved intact in the former owner; by it, it has been transferred from him to these,—and this not as a penalty for crime, and without reference to the crime of any person or his punishment therefor. Hence it follows that the statute

has, without cause or connection, simply deprived one man of property, and transferred that property to another. We use the words, simple and without connection, as describing this operation, because it can gain no color from the known operations of government, or the exertion of those powers entrusted to it by the members of society for their protection. No case can be found in history where confiscation has borne the name or character of tax. If clothed by its author with such a name, the fangs of the wolf betraying its character, history has written the true name.

This is no accident or unfortunate occult influence, but a deliberate provision of statute law: The property is claimed as forfeited by virtue of the statute, "The word forfeit originally (and still in French) meant a trespass, transgression or crime, but now with us it means the effect of some transgression or offense; that which is forfeited or lost, or the right to which is alienated by a crime, offense, neglect of duty or breach of contract; hence a fine, a mulct, a penalty."—(*Webster.*)

If any doubt exists as to the effect of this word in the federal statutes, examination of those in pari materia would soon remove it; from the indexes, the titles and the indiscriminate use of the words in the statutes themselves, it is evident that the congress considered the word forfeiture to be the synonym of penalty. One instance, (not a solitary one) is mentioned (12 Statute at Large, top of page 180) a forfeiture of two cents per gallon is imposed, and (12 Id. 656, ch. 46), where two kinds of penalties are affixed to an act, one corporal and the other pecuniary, the President is authorized to remit one without the other.

This forms part of the penal sanction of the law; a portion of the penalty imposed upon the disobedient as a punishment for the offence. Its object is the same as that of corporal penalties, viz—enforcement of obedience.

This is the uniform course of decision, the forfeiture is part of the penalty inflicted by the judgment or sentence of the law, * released by pardon. † (* 4 CHITTY CRIM. LAW, 320, 4 BL. COM. 387). († RASTELL'S ENTRIES, 455, 1 *Shower* 131, and other English cases quoted post). (*Armstrong's Foundry*, 6 Wallace 769, (pardon pleaded); *St. Louis Street Foundry*, 6 Wallace 770, (amnesty pleaded); *McLane* v. *The United States*, 6 Peters 404; *Greene* v. *Briggs*, 1 Curtis, C. C. R., 329; *Anglea* v. *The Commonwealth*, 10 Grattan 700; *Maclin* v. *Wilson*, 21 Ala. 670.)

What, then, is the subject matter of which the law takes cognizance, and upon which judgment is demanded? What is to be tried? This question is necessary because the framers of these statutes have used terms improperly for the purpose of misleading the judgment. Question begging names are applied, and here we find the forfeiture called the subject matter of the suit, in order, in

appearance, to comply with the law and say that the forfeiture being seized, the subject matter is within the jurisdiction of the court.

But what is the subject matter? What the subject to be tried? Is it not the violation of the law—the crime? And is not the penalty the sentence of the law, the consequence of judgment upon the subject matter?

Appearance of parties cannot give to Chancery jurisdiction to try a crime, nor to any other court from which jurisdiction of the particular crime charged is excluded by law. Can seizure of goods? It is clear that neither consent of parties, nor any other thing, can confer jurisdiction where jurisdiction is not conferred by law.

We will now examine the fundamental law to ascertain the character of the court, and the proceedings necessary to jurisdiction in this case; and by the result will test the present record and the statute from which it claims authority.

ART. 1. § 3, analyzes the proceeding according to law—"the party * subject to indictment, trial, judgment and punishment, according to law." It is to be noticed in this connection that a party is never the subject matter of a suit, nor is judgment or punishment. The subject matter is the cause of action, and no misapplication of terms can change the fact. The cause of action is the subject of trial; judgment and execution follow according to law.

ART. 3. § 1. The judicial power of the United States shall be vested in one supreme and such inferior courts as the congress may establish. The judges, both of the inferior as well as of the supreme court, shall hold their offices during good behavior.

§ 2. (1.) This judicial power shall extend to all cases, (whether the subject matter or cause of action be cognizable in law or in equity,) arising under this constitution, the laws of the United States, etc.

(3.) The trial of all crimes * * shall be by jury. Judges and jury compose the court, which shall exert the judicial power of the United States as to this subject matter; and pronounce and enforce the sentence of the law. The jury shall try the crime. And such trial shall be held in the State where the said crimes shall have been committed.

ART. IV. § 2. 2. Any person charged shall be delivered up to be removed to the State having jurisdiction of the crime. "Ju-"risdiction of the crime" is the phrase.

We pause a moment, before considering the amendments, to observe that the terms—cou rt, trial, jury, had clear and well-understood definitions and characteristics: their substantial elements are essential to satisfy the meaning and intention of this constitution, which it is ever to be remembered, was enacted and now exists to establish justice and secure the blessings of liberty to ourselves and our posterity.

"The right of the people to be secure in their persons, houses, "papers and effects, shall not be violated." "Superfluous to make "laws unless those laws, when made, are to be enforced." Is this a superfluity?

"And no warrants shall issue but upon probable cost, supported "by oath or affirmation, and particularly describing the place to be "searched and the persons or things to be seized."

Observe the four requisites to a valid warrant; requisites provided to prevent unreasonable seizures. (1) Probable cause (2) oath or affirmation (3) *Particularly* describing the place to be searched. (4) *And* (observe this is the conjunctive:);—*and particularly* describing the thing to be seized.

The statute formed no such warrant. It is deficient in every particular, therefore it is of no validity as a warrant; and George Schneider, collector, seized this property without warrant. (Record top page 2.) But in the administration of justice distributive a ministerial officer must have a warrant, the statute cannot be his warrant, therefore the seizure was an unwarranted and illegal act.

We find (p. 4) a warrant issued to the marshal and (p. 5) that he seized and held the property by virtue thereof. He ravished the ravisher. But if we should admit that the information filed stated probable cause as it was not supported by oath or affirmation, the warrant being prohibited by the constitution was void.

The court thus obtained illegal possession of the goods.

The oath is an absolute prerequisite to its power to issue a warrant to seize; and we cannot presume a jurisdictional fact. Jurisdiction must in some manner appear or the act is void, and there is nothing from which could be drawn even the slightest supposition that an oath had been made.

Constitutions establish principles and define public policy.

All statutes, contracts and acts of officers or private persons contrary to constitutional principles or public policy are void.

No person shall be held to answer for a capital or otherwise infamous crime (that is a felony) unless on a presentment or indictment of a Grand Jury, nor compelled *in any criminal case* to be a witness against himself, nor be deprived of life, liberty or property without due process of law. In all criminal prosecutions, *the accused* shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

No fact tried by a jury shall be otherwise re-examined in any court of the United States than according to the rules of the common law.

The common law and trial by jury are here both mentioned as existing and established realities. This common law "consisted in principles with a certain method for the orderly proceeding therein."

This trial by jury is the traditional institution which marks and characterizes the common law system, varied by the constitution only to add to its security and justice by assuring counsel witnesses and confronting witnesses in every criminal prosecution.

Returning to the text we find in every "criminal case;" in "all criminal prosecutions," "the accused." The essentials here put down for "criminal prosecutions" or "any criminal case" are (1) Some person accused; a definite person for (2) he is to be informed of the nature and cause of the accusation. This must be direct and personal and cannot be constructive for (3) he must be confronted with the witnesses against him.

Now we will state the requisites of the common law trial by jury in a criminal case. "The trial by a jury of twelve men, which upon all accounts as is settled here in this kingdom seems to be the best trial in the world. I shall therefore give a short account of the method and manner of that trial." (Matthew Hale. Common Law, ch. 12.)

(1) The jury must be of twelve men chosen from the vicinage where the deed was done.

4 *Bl. Com.* 352.
Hale's Common Law, ch. 12 (3d edition p. 249.)
Bacon abr. title Juries (A.)
The People v. *Kennedy* 2 Parker, (C. R.) 317, 318.

(2) Some person in particular must be accused; certainty is essential.

Greene v. *Briggs* 1 Curtis, (C. C. Rep.) 329, 330.
Fisher v. *McGirr*, 1 Gray 35.

(3) He must have the right of challenge.

Hale's Common Law, ch. 12 § 6, p. 253.
4 *Bl. Com.* 352.

(4) The accused is to be informed of the cause of accusation against him, and the charge must be certain and explicit.

Greene v. Briggs 1 Curtis, (C. C. Rep.) 329, 330, 331.
Greene v. James, 2 Ibid 189.
Saco v. Wentworth, 37 Me. 172.
Commonwealth v. Phillips, 16 Pick 213 214.
Fisher v. McGirr 1 Gray, 35.
Donovan v. Vicksburg, 29 Miss 247.
The People v. Slater, 5 Hill 401.

(5) The person to be punished must have the right to answer and contest the charge, and the consequent right to be discharged from it unless it is proved.

Greene v. Briggs, 1 Curtis, 325, 326.

Saco v. Wentworth, 37 Me. 172.

(6) The verdict of the jury is given in a single word "Guilty" or "Not Guilty."

Spelman title jurata (see post).

Hale's Common Law, ch. 12, § 6, etc.

"If the jury find the prisoner not guilty, he is *then forever quit and discharged of the accusation.* 4 *Bl. Com.* 361.

(7) The accused must be presumed to be innocent till proven guilty by witnesses confronting him face to face in the presence of the jury

Hale's Common Law, ch. 12, § § 8, 9.

beyond all reasonable doubt.

Wasden v. *The State*, 18 Ga. 265.

The State v. *King*, 20 Ark 167.

(8) None shall be punished for an offence unless he has had a trial and been proved to be guilty.

Greene v. *Briggs*, 1 Curtis (C. C. Rep.) p. 325.

1 Gray, 35 and 36.

(9) The accused shall be tried by an impartial jury. *Hale* C. L. ch. 12, § 6, 7.

(10) There must be a free and unanimous verdict.

BAC. ABR. *title juries.*

A man is to judge his neighbor, and except by the judgment of his neighbors no man is to be deprived of his property or liberty or life as the penalty for any crime.

I will not here repeat what I said in Mason v. Rollins, pp. 487–498, but will now quote from other authorities and contemporaneous writings to illustrate the construction and show enough of the manner in which this traditional trial was fixed as part of the English constitution to assure us that the features named are unmistakable essentials. And then we shall see that this trial is the only form of investigation of any accusation, criminal case or criminal proceeding known to the law of the land.

It is not to be forgotten, in the examination of English precedents that for centuries the violations of Magna Charta were so frequent and glaring that it had to be re-enacted or confirmed more than thirty times; and yet in Blackstone's Commentaries we find it cited as then and always the English Constitution; the palladium of liberty.

Nor is it to be forgotten that parliament controlled that constitution, and possessing absolute despotic power did change, mould and relax it at will.

We shall find in the general method of jury trial some grave

defects inconsistent with the system and so observed by the sages of the law.

(1) The accused could not have the assistance of counsel in a criminal case.

(2) There were cases, like the trial of Raleigh, where the testimony of witnesses was taken *ex parte* and not confronting the prisoner; and where he was denied compulsory process for obtaining witnesses in his favor.

These were acknowledged to be blemishes in the system that ought to be removed by act of parliament.

(3) The greatest defect, however, in the Constitution of England was that in some cases this trial was disallowed or its established incidents and safeguards were dispensed with, under the authority of acts of parliament.

Prior to the time of Henry VII. there were five or six statutes relating to particular trades or minor police powers which gave justices power to try offences against those acts and took away the right to trial by jury. The statute of Henry VII. introduced absolute and arbitrary trials by the discretion of the justices and without jury, for the enforcement of the penalties of all statutes.

Though this statute was repealed, the evil was not wholly rooted out; after the restoration this convenient method was attached to the game laws, and with the introduction of the new excise laws was applied to their enforcement, and again extended like the statute of Henry VII. to all offences punishable by forfeitures without any limitation as to the amounts; courts of commission were created and clothed with this dangerous power to seize into the king's hands the goods of suspected persons at their will or suspicion and to try the offences or forfeitures, (begging the question by the name) without a jury, or without some of its essential constituents.

Like an act of parliament to remedy and remove these defects, the amendments to the constitution leave intact the jury trial, adding these provisions for its safety, and so perfected and symmetrized establish its jurisdiction as the essential element of one department of government, and guarantee it intact to every citizen in any criminal case, and in all criminal prosecutions.

4 Bl. Com. 349, V. "The trial by jury or the country, per patriam, is also that trial by the peers of every Englishman, which as the great bulwark of his liberties is secured to him by the Great Charter. * *

The antiquity and excellence of this trial for the settling of civil property, has before been explained at large. And it will hold much stronger in criminal cases; since in the times of difficulty and danger more is to be apprehended from the violence and partiality of judges appointed by the crown, in suits between the king and the subject, than in disputes between one individual and an-

other to settle the metes and boundaries of private property. Our law has therefore wisely placed this strong and two fold barrier of a presentment and a trial by jury, between the liberties of the people and the prerogative of the crown, * * * * * * so that the liberties of England cannot but subsist, so long as this palladium remains sacred and inviolate not only from all open attacks but also from all *secret machinations which may sap and undermine it* by introducing new and arbitrary methods of trial by justices of the peace, *commissioners of the revenue*, and courts of conscience. And, however convenient these may appear at first (as doubtless all arbitrary powers, well executed are the most convenient) yet, let it be again remembered that delays and little inconveniences in the forms of justice are the price that all free nations must pay for their liberty in more substantial matters; that these inroads upon this most sacred bulwark of the nation are fundamentally opposite to the spirit of our constitution; and that though begun in trifles, the precedent may gradually increase and spread to the utter disuse of juries in questions of the most momentous concern."

The law cannot take away all a man's property thus, if he has committed no crime, and if he has committed a crime for which he is to be thus punished, it must be proved and he must be deprived of his property by the judgment of his peers, for the trial of all crimes shall be by jury. The constitution requires that the trial of all crimes shall be by jury in the state where the said crimes shall have been committed. A suit in rem tries the crime anywhere, or in case of seizure and default does not try at all and yet condemns. In the case at bar it is true that the alleged crime was alleged to have been committed at the place where the trial was had, but the statute requires no such allegation, nor any proof that the crime was committed in the state; and because the statute authorizes the trial and punishment anywhere, it is void.

It not only authorizes the punishment in New York of a crime committed in Iowa or Louisiana; it authorizes the punishment of the innocent bona fide purchaser; whose purchase and shipment was made in a third state; and who guilty of nothing in Louisiana, Iowa or New York, whose only act was done in Ohio, may in any place the property may be found, be deprived of his property under color of this law. This is his property, unless it ceased to be property when the crime was committed, or unless the former owner was divested of it, by due process of the law.

The forfeiture is inflicted as a penalty for an offence. (2 *Paley's Summary Convictions*, and supplement by Dowling, 445.) The system is derived from England, and as there; the information is *against a trader for an offence. (Ibid.)* The remedy by summary conviction in England applied first to the determination of pecuniary penalties and forfeitures. (*Ibid* 446, 447, 448.) *Second*:

to the determination of specific forfeitures and seizures, (*Ibid*) but both were of the same nature—penalties inflicted for violations of law, and ascertaining the offence was a judicial act. (*Ibid* 449 to 452, 453, 472 to 484.)

In passing observe this feature of the system: "in most cases "where proceedings are had for offences or forfeitures under the "excise laws and any negative allegation is made by the prosecutor, or "any question might arise on whom the burden of proof lay, it is "thrown by positive enactment on the defendant." (p. 477.)

The presumption of innocence is inherent in the organization of society, is a right necessary to the security of the individual, and is a rule of judgment declared by the uninterrupted decisions of common law *Mirror* 240 (15.) *Greenl. Ev.*, 28 § 29.

And in criminal proceedings we shall see that this forms part of the due course and process of the law to judgment. (3 *Greenl. Ev.* 1213, § § 10, 11.)

Attention is now asked to the INTRODUCTION of this work (Paley's Summary Convictions) commencing: "An inquiry into "the antiquity of that summary method of conviction, which "forms the subject of the following treatise, or into the causes "which occasion *its substitution for that mode of popular trial which* "*distinguishes our jurisprudence,* is rather prompted by curiosity "than by any relation to the law upon the present subject as it now "subsists: *since that is founded entirely upon the positive authority* "*of acts of Parliament, from which source, alone, the whole system* "*derives its being.* A few cursory remarks however upon the date "and origin of a judicature *so remarkably contrasted with the* "*spirit of our primitive institutions,* may not it is hoped be al- "together unacceptable or misplaced."

The whole introduction thus introduced should be read and pondered. The first great alteration in the manner of appointment of the officers from election by the freeholders at large (p. xvii;) the vesting of discretionary power of conviction (pp. xviii, xxiii;) the application of commissioners' powers to carrying into effect the penal statutes relating to particular trades (p. xix); the admission of the informer to a share in the forfeiture contrary to Magna Charta, (p xxvi). "All the acts however prior to the "reign of Henry VII. which entitle the informer to a moiety of "the penalty direct the mode of recovery to be an action of debt, "bill or plaint, nor before that time does there appear to be any "instance of a power to proceed by information at the sessions "for penalties. In that reign it was that it became usual to insert "in penal statutes the provisions authorizing the recovery of "the penalties before the justices in sessions by information. * * "The policy of affording this encouragement to *prosecutions* "*which brought a share of the penalties to the crown, is charac-* "*teristic of the ruling disposition of this sovereign*; and in that

"light it may be worth remarking that the last session of his reign "affords a striking proof of the influence *of that spirit* upon the charac- "ter of the law, *by the iniquitous principle* of making the justices "sharers in the penalties of their own inflicting." (p. xxv) (See 19 Hen. VII.) "In the eleventh year of that King's reign" (Hen. 7) "the legislature was induced to break down all respect for the "ancient common law mode of trial, by an act, that in spite of "the fair preamble betrayed its true source *in the rapacious policy* "of the monarch, viz: Hen. VII. c. 3, which pretending that "many wholesome statutes where not executed, by reason of the "embracery and corruption of the inquests, ordained that it should "be lawful for the justices of assize and the justices of the peace "in every county upon information (for the King) *at their discre-* "*tion*, to hear and determine all offences short of felony against any "statute then in being. This discretionary authority, fettered by no "rules, and intentionally absolved from the observance of law and "usage, enabled the justices to execute all penal statutes without any "presentment or trial by jury. *The real intention* of the statute "which was that of *replenishing the Exchequer* by the terror of "arbitrary and vexatious prosecutions, *under color* of penalties "upon all the most obsolete penal statutes, however obscure or "inconsistent with the times, was rigorously seconded by Empson "and Dudley; whose activity was stimulated by a grant of the "extraordinary office of clerks of the forfeitures. By their means "the *mischief of a power so liable in any hands to abuse*, be- "came an instrument of intolerable oppression, *the more galling* "*from its pretentions to legal authority.*"

This was the system conceived in sin and fashioned in iniquity of which the editor in his advertisement says: "The enlightened "spirit of improvement which is now diffusing itself over other sub- "jects of legislation, has not yet extended its influence to this no less "*important object of melioration*; but though the lately predom- "inant disposition to increase the preternatural bulk of the penal "code would indicate a disinclination to alter the institution itself, "a hope may be reasonably entertained that a practical scheme is "in contemplation for rendering the principle of summary juris- "diction *less anomalous* it its application, and more consentaneous "*with genius and the spirit of the British constitution.*"

When the people of the states of america united themselves as a nation they repudiated all anomalous jurisdictions inconsistent with the genius of their institutions, and allowed no substitutions for that mode of popular trial which distinguishes our jurisprudence established by the spirit of our primitive institutions.

We therefore close the references to this work by recurring to the *Introduction* page xx. "The few instances however in which a summary power of fine or imprisonment was committed to in- dividual justices, amounting up to the end of the reign of Eliza-

beth, to no more than four or five, attest the unwillingness of the legislature to quit the safe and approved forms of criminal judicature. In the following reign the multiplied statutes against a variety of petty disorders, such as those relating to alehouses, profane swearing, drunkenness, game, wages, embezzlements and such like, occasioned a more frequent recourse to the interference of justices of peace *which was gradually extended* to matters of greater importance, *as the nation became more familiar to its use*; *and* after the restoration *by the first excise acts* and *by several statutes affecting regulation of trade*, and lastly by the Game Act (22 & 23 Car. 2.) *the practice was insensibly moulded into the jurisprudence of the country*, of which it still continues to form an important branch." This introduction concludes with briefly noticing the changes which have been made in this anomalous system since its introduction, notable among which are those under the *Hereditary excise act*, as it is called, and concludes by a reference to the evils which are liable to flow from the dispensation with the securities of the common law even in the entering of judgments by tribunals in which such powers are vested, unlimited as to the amounts to be adjudged.

The MIRROR OF THE JUSTICES shall furnish us texts, written in time of Ewd. I., and supposed by many learned men to have been written by that King himself, so great is its authority.

We quote however first from the Editor's preface: "The "Common Law is nothing else but pure and tried reason (responsa "prudentum) allowed and known, containing the principles and "maxims of law with *a certain method* for the orderly proceeding "therein; the rest consisting in the minds of the sages of the law, "ready by argument to approve what is truth, and under-propt with "authorities to condemn what is false."

In this preface also we find the laws of Edward and of Alfred for the establishment of a decennery in every hundred, "who were "charged to bring forth the person of every offender to answer "unto the law." And we shall find that in personal actions the person could not be summoned but must be brought forth as is said: "the person of every offender to answer unto the law."

From the text we quote, page 7: "And the sheriffs and bail-"iffs caused the freetenants of their bailiwics to meet at the counties "and hundreds; at which justice was so done, that *every one so* "*judged his neighbor* by such judgment as a man could not else-"where receive in like cases."

Page 14. "It was ordained that no action was receivable to "judgment if there was not a present proof by witness or other "things."

Pages 51 to 56. "Of the Sheriff's turns" and "Of views of "frank pledges" the first charge to the Grand Jury closes: "And "the presentments are to be sealed with the seal of the Jurors so

"that none by fraud do increase or diminish them. * * All "those which are presented for any offence which is mortal, " * * * are to be seized upon." All felonies were then mortal offences. This agrees with Hawkins' authority: "The first thing to be done in order to bring a criminal to justice "is to arrest him." (2 Hawkin's P. C. Analysis, p 1).

Mirror, page 58. "When it is said that kings and princes have "the government and correction of offenders; * and to that "intent they are God's vicegerents on earth, and to do the same "they have jurisdiction over the offenders by pains; * * "nevertheless kings cannot or ought not to take notice of the "offences of others without action of accusers. * * * "Right judgment cannot be given without there be three persons "at the least; viz: a judge, a plaintiff, *and a defendant*, * * "Therefore it behooveth to speak of actions and who are and may "be judges, and who plaintiffs and who defendants.

"An action is nothing else but a lawful demand of a right, "and there are three manner of actions which have their introduc- "tions by writs and by plaints in manner as followeth, viz: per- "sonal, real, and mixt."

Page 61. "Plaintiffs are those who pursue their right against "others by plaint. All may be accusers or plaintiffs who are not "forbidden by the law. * * * How lawful men "ought to complain. * * * If * the cause "be criminal, then ye are to distinguish; for if any one seek re- "venge then it behooveth him to bring his action by appeal of "felony."

Page 66. "Personal actions have their introductions by attach- "ments of the body; real by summons; and mixed actions first "by summons and afterwards by attachments."

Page 10. "It was ordained that the kings' courts should be "open to all plaints, by which they had original writs without delay, "as well against the king or the queen as against any other of the "people, for every injury but in case of life *where the plaint held* "*without writ.*"

Page 67. "At the next Court after the appeal is enrolled, it "belongeth to such plaintiffs to recite their appeals, * * * "The attachments of mortal offenders are by their bodies without "sureties, and the attachments of venal personal offenders are also "by their bodies, but yet they are bailable."

Page 71. "Then are such appellees demandable only by their "names, and by such names as they are best known by, that they "appear to answer the king's peace."

Page 84. "But because some are wrongfully slandered, King "Henry I. ordained that none should be arrested or imprisoned "for slander of mortal offence before he were thereof indicted by "the oaths of honest men, before those who had authority to take

"such indictments, and then they were first to be seized upon by "their bodies and goods as in appeals, and to be kept in prison till "they cleared them of the infamy before the king or his justices."

Page 116. "All those who are not forbidden by law are sum- "monable, none is to be summoned for a personal offence." The thing to bring a criminal to justice is to arrest him. (*Ante*).

Page 133. "Against the power of the judge the defendant "may help himself," demanding sight of the judge's commission and pleading thus: "I appeal from this commission because it "maketh no mention *of the cause for which I was brought to judg-* "*ment.*"

Page 138. "Or he may take exception, * * for as "much as he is not brought to judgment by the right course."

Page 143. "These exceptions hold to the indictments. Sir, I "demand sight of the indictment, whereby I may take exceptions "against the persons of the indictors or to the form of the indict- "ment."

Page 229. "It is an abuse to affeer an amercement in the ab- "sence of those who are to be amerced."

Page 231. "It is an abuse to make a man answer to the "king's suit where he is not indicted nor appealed."

Page 240. *Alfred* "hanged Seafaule because he judged Old- "ing to death for not answering. He hanged Thurston because he "judged Thurguer to death by a verdict of enquest taken ex-officio "*without issue joined.*

"He hanged Rombold because he judged Lischild, in a case "not notorious; without appeal and without indictment.

"He hanged Freburne because he judged Harpin to die, "whereas the jury were in doubt of their verdict, for in doubtful "causes one ought rather to save than to condemn."

Page 248. "It is an abuse to compel jurors or witnesses to "say that which they know not." * * It is an abuse to use the "words (to their knowledge) in their oath, to make the jurors speak "upon thoughts since the chief words of their oaths be that they "speak the truth."

Page 251. "It is an abuse that none have recovery of wrong "done by the king or the queen but at the king's pleasure."

"Seeing how that the law of this realm, founded upon forty "points of the great charter of liberties, is damnably disused by the "governors of the law, and by statutes afterwards made contrary to "some of the points."

See also pp. 258, 262, 277. "None is bounden to answer "to the king's suit if not by appeal or indictment, (278, 279, 287, "293.)."

One thing appears quite certain, that at that early day there must be a defendant in all criminal actions:—he must be present to be tried:—the cause of his accusation must be distinctly made

known to him :—he cannot be tried unless he join in issue, or condemned without trial, except upon deliberate confession in open court :—the jury must be his jurors, must be accepted by him :—he must have the right of challenge :—he was entitled to the presumptions of his innocence; and his neighbors were to be his judges.

In searching this subject I find in the Library of Congress (Pol. Pam. v. 28) a law tract entitled : "The Englishman's Right," setting forth (1) "the antiquity," (2) "the excellent designed use," (3) "the office and just privileges of juries by the law of England." By Sir John Hawles, Solicitor General to King William.

This tract appeared first in the year 1680; was reprinted in the year 1731, and again in 1752, 1763, 1764, 1770, and 1771, and again in the same year, making the eighth publication. The object of this republication is, that "it will perhaps be a principal means of preserving the trial by jury in full force to posterity." (p. vi.)

This work is in the form of a dialogue between a juryman and a lawyer; upon page 1, the juryman urges excuses for not serving: —"You know, sir, there is something of trouble and loss of time "in it; and men's lives, liberties, and estates (which depend upon "a jury's guilty—or not guilty—for the plaintiff—or for the defend-"ant) are weighty things. I would not wrong my conscience for a "world or be accessory to any man's ruin." He is answered (p. 2) "To withdraw yourself in such cases is a kind of sacrilege, a rob-"bing of the public of those duties which you justly owe it. The "more peaceable man you have been the more fit you are, *for the* "*office of a juryman is* conscientiously *to judge his neighbor on which* * * * (as you well observe) *the lives, liberties and estates of all* "*England depend* * * * There are faults in omission "as well as commission. When you are legally called to try such "a cause, if you shall shuffle out yourself, and thereby persons per-"haps less conscientious happen to be made use of, and so a villain "escapes justice or an innocent man is ruined by a prepossessed or "negligent verdict; can you think yourself wholly blameless?"

Antiquity, (p. 5). "Most certain it is they" (juries) "were "practiced by the Saxons, (Lamb, p. 218, 1 Co. Inst. 155), and "were then the only courts, or at least an essential, and the greater "part of all courts of judicature: for so (to omit a multitude "of other instances) we find in King *Ethelred's* Laws, 'In "singulis Centuriis, etc.' 'In every hundred let there be a court "and let twelve ancient freemen together with the Lord (or rather "according to the Saxon, the Greve, i. e. the chief officer amongst "them), be sworn that they will not condemn any person that is "innocent, nor acquit any one that is guilty.'" (See the text for authorities showing its continuance).

Page 6. "But has this method of trial never been attempted "to be invaded or justled out of practice? It is but rarely that

"any have arrived to so great a confidence. 'For it is a most "dangerous thing to shake, or alter, any of the rules or fundamen- "tal points of the common law, which in truth are the main pil- "lars and supporters of the commonwealth.' (1 Co. Inst. 74.) "Yet sometimes it has been endeavored: but so sacred and valu- "able was the institution in the eyes of our ancestors, and so "tenacious were they of their privileges, and zealous to maintain "and preserve such a *vital part* of their birthright and freedom, "that no such attempts could ever prove effectual." King Alfred "hanged one Justice Cadwine because he judged one Hackwy to "death without the consent of all the jurors; *for* whereas *he stood* "*upon his jury of twelve men*, because three of them would have "saved him, this Cadwine removed those three, and put others in "their room on the jury against said Hackwy's consent.'" (*Mir- ror.*) "Where we may observe, that though the last twevle men "did give a verdict against him, yet those so put upon him were "not accounted his jurors."

King Alfred evidently understood the essential securities of a jury trial. Our author (pp. 8–9) having recited the commissions and acts of Empson and Dudley, speaks of their execution: "Not- "withstanding they had such an Act to back them; it being "against magna charta and *consequently void.*"

ADVANTAGES of trial by jury.

Page 10. "None can be condemned, either by the power of superior enemies, or the rashness or ill-will of any judge, nor by the bold affirmations of any profligate evidence: but no less than twelve honest, substantial, impartial men, his neighbors, must first be fully satisfied in their consciences that he is guilty: and so, unanimously, pronounce him upon their oaths. Are not these, think you, very material privileges? Yes, certainly; though I never so well considered them before. But now I see plainly our forefathers had, and we still have, all the reason in the world to be zealous for the maintenance and preservation thereof from subversion *or encroachments*, and t transmit them *entire* to posterity. For if once this bank be broken down or neglected, an ocean of oppression and the ruin of infinite numbers of people may easily follow when on any pretence they may be made criminals, and then fined in vast sums, *with pretext* to enrich the king's coffers, *but indeed* to feed those insatiate vultures that promote such unreasonable prosecutions."

It is not my province or policy to load with superlative adjectives the application of these principles and thoughts. If the cases of this series and the intent of this law have not discovered the simple enormity of the oppression, and revealed a gulph of despotism like this, imagined and so simply described two centuries ago, I could not impose upon the court by any collocation of words.

OFFICE AND POWER of juries.

Page 11. "'A jury of twelve men are by our laws the only proper judges of the matter in issue before them,' (4 Co. Inst. 84), as for instance: That testimony which is delivered to induce a jury to believe or not to believe the matter-of-fact in issue, is called in law, *evidence;* because thereby the jury may, out of many matters of fact, *evidere veritatem;* (p. 12,) that is, see clearly the truth, of which they are the proper judges.

"When any matter is sworn or deed read or offered, whether it shall be believed or not, or whether it be true, or false, in point of fact, the jurors are proper judges. * * The Court is not judge of these matters, which are evidence to prove or disprove the thing in issue. * * And in all pleas of the crown, (or matters criminal) the prisoner is said 'to put himself for trial upon his country;' which is explained and referred by the Clerk of the court to be meant of the jury, saying to them: 'which country you are.' * * * The king's justices, or the court, are to do equal justice and right, particularly, (1) To see that the jury be regularly returned and duly sworn. (2) To see that the prisoner (in cases where it is permitable) be allowed his lawful challenges." (3) etc. "Lastly, they are to take the verdict of the jury, and thereupon to give judgment according to law. For the office of judge (as Coke well observes) is *jus dicere*, not *jus dare*; not to make any laws by strains of wit or forced interpretations; but plainly and impartially to declare the law as established."

Pages 16 to 27 prove that the jury are judges both of fact and law, that the trial is by them, and a finding of the mere fact is no verdict. The illustration is an instruction by the court to stop their mouths and satisfy their consciences: (p. 26). "'You have nothing to do with that; it is only matter of form or matter of law: you are only to examine the fact, whether he spoke such words, wrote or sold such a book, and the like.' Now, if they should ignorantly take this for an answer and bring in the prisoner guilty. * * the Clerk recording it, demands further confirmation, saying to them, * 'You say A. B. is guilty of the trespass or misdemeanor in manner and form as he stands indicted, and so say you all;' to which the foreman answers for himself and fellows: 'Yes!' whereupon the verdict is drawn up—'*Juratores super sacramentum suum dicunt*,' etc. 'The jurors do say upon their oaths that A. B. maliciously, in contempt of the king and the government, with an intent to scandalize the administration of justice, and to bring the same into contempt, or to raise sedition, &c., (as the words before were laid); spake such words, published such a book, or did such an act against the peace of our lord the king, his crown and dignity.

"Thus a *verdict*, so called in law, because it ought to be the "*voice* or *saying* of *truth* itself, may become composed in its material "part of falsehood."

Our author goes on to show how such false verdicts may and have brought men to death, and concludes: (p. 32.) "But the verdict itself, when given, is not an act ministerial, but *judicial*, and (supposed to be) according to the best of their *judgment*;" and (p. 33) they being not assured it is so from their own understanding, are foresworn. See also pp. 34, 35, 38, in which Parliament, in 1667, resented the interference of the Chief Justice, and resolved that his proceedings "are innovations in the trial of men for their lives and liberties. And that he hath used an arbitrary and illegal power which is of dangerous consequence to the lives and liberties of the people of *England*, and tends to the introducing of an arbitrary government.

"Secondly. That in the place of judicature the Lord Chief Justice hath undervalued, villified and contemned *magna charta*, the great preserver of our lives, freedom and property.

"Thirdly. That he be brought to trial in order to condign punishment."

Page 46. "There are some that * think it merit to stretch an evidence and strain a point of law, because they fancy it makes for the interest of the government; as if injustice or oppression could in any case be for the true interest of government, when in truth nothing more weakens or destroys it."

In *Starkie's Criminal pleading* the author thus introduces the work: "The legal definition of an offense being proposed, as well as the circumstances of a particular case falling within that definition, how is the charge to be described against the offender on the face of the record? With what certainty of legal terms and language? With what enumeration and detail of circumstances? To answer this important question with as much brevity as consists with clearness, and with reference to the authorities, is the principal object of this treatise? I propose, therefore, in the first place *briefly to enumerate the different modes of criminal accusation recognized by the courts.*" This the author does and at page 300 proceeds: "After an indictment has been found against a defendant if he be not in custody it is necessary to issue process for the purpose of bringing him into court *to defend himself* against the charge; for though a bill may be found against a person in his absence, this being merely an exparte proceeding to which if present he could make no opposition, *yet no indictment can be tried unless he personally appear, a provision founded upon a principle of equity in all cases.*"

This provision, we have seen, existed as early as the time of Alfred, (Mirror, 240–10, 11,) re-enacted by 28, E. 3, c. 3, and it appears that the same rule applied to informations, page (325.)

Page 337. "In all cases of treason and felony and of misdemeanors, where the defendant is in custody he is arraigned at the bar of the court; or in other words, he is asked by the proper of-

ficer whether he is guilty or not of the offence with which he is charged." The person must be identified, "the indictment is then read over to him and he is asked whether he is guilty of the crime whereof he is indicted or not guilty, and he then either stands mute or confesses the fact or pleads to the indictment. The entry of the arraignment *upon the record* is in this form: 'And *being 'brought to the bar here in his own proper person* he is committed to the marshal, &c. And being asked how he will acquit himself in the premises above laid to his charge, saith, &c.:' and the record, it seems, would be erroneous if it omitted so important a part of the proceeding." *Anon*, 3 Mod. 265.

The King v. Geary (1 Shower, 131) is an important case in this connection. The errors urged were that (1) though the indictments were in Latin they were to be read to the prisoner in English, for it is the matter and not the form they must answer to.

(2) A man cannot plead to a capital crime but in custody and non constat here that he was in custody; there is no entry.

(Observe that all capital cases were felonies and all felonies were capital cases in the early law.)

(3) "There was no arraignment; and by the common law a man ought to be arraigned."

(See the case on this point.)

(4) "There is no *allocutus* before judgment, and all the precedents are so; and the law requires that of necessity *for he might have a pardon* to plead, or he might move in arrest of judgment."

"Per curiam: Judgment reversed. But by Dolbin Justice Over of the indictment is tantamount to an arraignment. * * *All held* the last to be a fatal exception." If it does not appear that the prisoner was asked "What he had to say why judgment should not be given, &c.," it is erroneous. (Same case, 2 Salk. 630, Rex v. Tucker, 12 mod. 51. See this case.) (1 Plow. 387).

From *Coke's Entries*. Title indictment, p. 352 et seq it will be seen that, first, a capias ad respondendum was the process on which the offender was brought in. Next an arraignment in his own proper person and a plea by him, then the verdict in form already stated in the law tract of 1680, then before sentence, the allocutus, "quare cur hic ad judm et executionem de eo sup pmissis procedi non debeat."

Rastell's Entries, 455, et seq. shows that a pardon covers not only the crime but extends to judgments, executions and forfeitures and places the prisoner in the same position as if no crime had been committed, as this court has also determined. (7 Wall.) The same collator, p. 115, et seq., exhibits the grounds and manner of challenges to jurors.

Returning to Starkie, (Crim. Plea.) having found him so notably correct, we find (p. 377) "Upon a capital charge a verdict cannot be given in the absence of the defendant; and the jury just

before they gave their verdict are required by the clerk of the arraigns to look upon the prisoner. But in case of a misdemeanor below the degree of felony, *if the prisoner has appeared and pleaded* the prosecutor may proceed to trial, and a verdict may be given against him in his absence." Page 378. "The jury may either deliver a general verdict of *conviction* or *acquittal* upon the whole of the charge; * or they may specially find the defendant guilty of a part of the charge and acquit him of the remainder."

I have italicized these words convict and acquit because thereon hangs the result of a jury trial: he is convicted or acquitted *of the charge*. No special finding of fact separated from law, but judgment, which is the union of both, delivers the prisoner to sentence or freedom. If to the first; the allocutus is pronounced asking if he has anything to say why the law shall not here proceed to enter judgment and execution against him: and then he may move in arrest of this judgment, or exhibit his pardon.

Let us now consider the oath of the jury, having first referred to 4 *Chitty, Crim. Law*, 267, et seq., 303 et seq. Page 316. Oath of the juror. "Look upon the prisoner. You shall well and truly try, and true *deliverance* make between our sovereign lord the King, and the prisoner at the bar, *whom you shall have in charge*, according to your evidence. So help you God."

Upon page 320 are the several charges to the jury, the third of which is especially to be noted, because if any forfeitures were incurred in the crime, the jury were to enquire of that also and of all the matters forfeited.

If the prisoner is found guilty the forfeitures might then be taken, if acquitted he went free of all penalties and forfeitures.

He could not be twice vexed or tried for the same cause. (p. 334.)

The cause of one clause in the constitution is: "The assumption of the payment of the judges' salaries by the king in conjunction with the natural and general tendency in all ages and countries of the legal profession to side with authority threatened to put the administration of the law completely under the control of the government." Works of John Adams, vol. 3, pp. 513, 514, 517, A. D. 1773. "I observed that no man in the province could say whether the salaries granted to the judges were *durante bene placito*, or *quamdiu bene se gesserint*, as the judges of England had their salaries granted to them. * * I always thought the judges' salaries should be independent both upon the king and the people; that there was great danger to a commission arising from their dependency upon either."

In this the people seem to have agreed with General Brattle, for while Mr. Adams (p. 524) shows that the subsequent remarks of the General as to the antiquity of the rule were mistaken, yet we have in another argument seen that "now for the greater secu-

rity of the liberty of the subject their commissions are quamdiu se bene gesserint." (BAC. *Abr.*)

Examination of Duncomb's *Trials Per Pais*, title *challenge* (p. 164) to the array and (p. 178) to the polls, shows the absolute necessity for the clear stating of the charge against a particular person, and that he be present to challenge the jury and try his challenges in order to attain the object of an impartial trial.

"A principal challenge is nothing else but such matter which proves evident favor or enmity in the juror; and therefore it belongeth to the Justices to draw the juror and not leave the decision to triors." (Id 178, 24 Ed. 4, 11, Rolle, *Trial*, 649, p. 1.)

The number of jurors must be twelve. Duncomb's *Trials Per Pais*, 92.

The jury is called jurata, and this is not an equivocal name, "because we always understand that word to be a jury of twelve men so called by reason of the oath they take." (Id. 239.)

SPELMAN *Glossarium Archaiologicum*, (Library of Congress, chap. 39, No. 11048), title *jurata* may be read with interest. We find here the law of *Ethelred* already quoted. We quote the form of the choice, the trial and the verdict, (p. 328). "For the suit (*lis*) has its jury chosen from the vicinity of the thing litigated, who, hearing the testimony and proofs of the litigants, are committed in custody of the lictor or bailiff, previously solemnly sworn to conserve the jurors apart from all other consorts without food, or drink, or fire, or candles, when they converse among themselves upon the question, inquiring what may be the postulate for or against the thing litigated: from their view of the whole premises submitted, the jury respond in a single word *Guiltie*, for: *Not Guiltie*, against the suit. And this response is called their *veredictum*. "Similiter proceditur in juratis Criminalibus."

The *History of Juries* by Forsythe, has been lost from the Library of Congress. A little book called *A Guide to English Juries*, written in 1681, and published in London in 1725, is of considerable value on account of the careful study of authorities and precedents evidently given by the anonymous author, coupled with his evident familiarity with contemporaneous practice. True he quotes considerably from the scriptures, but this does not weaken the effect of his rendering of the law; for from the beginning of English law this had been the most prolific authority quoted by legal writers, and Lord Coke's works are full of it as an authority. He opens by stating to jurymen—"You are England's Ephori and tribuni; *The boundaries of prerogative and privilege, and the living bulwark of the laws.*" I will quote but little from this book: first from p. 7, "What the jury does is called verdictum veridictam—the declaring of what is the truth in the matter. What the judges do is called judicium; juris-dictum the telling only of what is the law." And after examining the conclusive qualities of the verdict

guilty or not guilty, or of a special verdict, it proceeds: (p. 9). "Thus we see judges are unessential and needless in a trial by jury, further than to assist it by answering and informing what the law is where difficulties arise;" and the whole volume is to the same effect with that from which we have so largely quoted. (Before leaving the reference I quote parenthetically an apt illustration in answer to the suggestion that the proceeding in rem for forfeiture has been in use for some time. Page 10. "People daily rob, and so have always done on Salisbury plain, but 'tis ne'er the more lawful.")

One more volume closes the list of those in this library, which are nearly contemporaneous with our constitution. This volume, written sometime before and republished in New York in 1773, appears from the writing on the blank leaf to have been owned in Philadelphia from 1783 to 1790. It is entitled "*The Security of Englishmen's Lives*," and commences: "The principal ends of all civil government and of human society, were the security of men's lives, liberties and properties, mutual assistance, and help each unto other, and provision for their common benefit and advantage; and where the fundamental laws and constitution of any government have been wisely adapted unto those ends, such countries and kingdoms have increased in virtue, prowess, wealth and happiness."

This is applied (pp. 4-2) to the fundamental institution of our ancestors to maintain their native freedom. The gist of page 6, is that the people so constituted the government to prevent such oppression as history recorded of one, *because he would not submit his property to an arbitrary power*. Page 7. "The office and power of these juries is judicial; they only are the judges from whose sentence the indicted are to expect life or death. Upon their integrity and understanding the lives of all those that are brought into judgment, do ultimately depend; from their verdict there lies no appeal; by finding guilty or not guilty they do complicately resolve both law and fact. As it hath been the law so it hath always been the custom and practice of these juries upon all general issues, pleaded in cases civil as well as criminal, to judge both of the law and fact. So it is said in the report of the Lord Chief Justice Vaughan, in Bushel's case, that these juries determine the law in all matters where issue is joined and tried in the principal case whether the issue be about trespass, or a debt, or desseizin in assizes, or a tort or any such like, unless they should please to give a special verdict, with implicit faith in the judgment of the court to which none can oblige them against their wills, (Vaugh. 150-151.) These last twelve must be of equal condition with the party indicted, and are called his peers.

* * Every man in the twelve must agree in the verdict freely, without compulsion, fear or menace, *else it is no verdict.* * * Our ancestors were careful that all men of the like condition

and quality, presumed to be sensible of each others infirmity, *should mutually be judges of each others lives.*"

This book was not republished in New York in 1773, on account of any fear of popish plots, but because of its clear delineation of that traditional tribunal which had been called the bulwark and security of the lives, liberty and property of the English people; a subject, then, of deep interest in America. Whether or not this publication had anything to do with the frame of the declaration of independence three years later, or the draft of the constitution made at Philadelphia, while this volume appears to have been present in that town, it is clear that its opening sentiment has a familiar sound to American ears, and its reasoning upon some subjects ran parallel with the popular mind.

One more quotation and I must leave it. "'Tis committed to their charge and trust to take care of bringing capital offenders to pay their lives to justice and lesser criminals to other punishments."

This explains the word deliverance in the oath of the petit jury. As we saw in the Mirror, the original of criminal trials allowed composition unless the appellant desired *revenge;* but in time it grew to be believed that the criminal owed his life or liberty to justice to compensate for a broken law. The grand jury brought him to pay the debt, he was given in charge to the petit jury—see the oath "whom you shall have in charge," and it was true *deliverance* to make to the king the fountain of justice, in its judgment, or to the defendant in acquittal; and that acquittal was forever to deliver him from the charge.

I have assumed that the court is familiar with the history and incidents of a jury trial, and have only added so much from its early history and regular practice as would place our understanding of this system beyond doubt or cavil, and have used these works written about the times of English reconstruction in 1688, and American constitution a century later, to show that the people understood the full scope of their words when they required the trials to be by jury. And before we proceed further it may be pertinent to inquire how 213 kegs of Tobacco and 1 Steam Engine can be tried by jury. How the judicium pares can be had unless we call kegs of tobacco and steam engines to sit in judgment? The thing is an absurdity, and as there can be no trial by the neighbors unless there is a defendant to whom they are peers, the action of a jury in such a case is but the mere ex parte action of an inquest, and not a trial. If it is a trial for crime, and the effect is to meet out the punishment of crime, then, as no fact tried by jury can afterwards be examined but according to the course of the common law, and the trial has been by the peers of the criminal, he has had his day in court, and the verdict of the jury is a bar to all other proceedings. It is a maxim of the common law that "a man cannot be twice vexed for one and the same cause." And this forms part of the system of jury

trial. We have adopted it in its full breadth and scope, and have rejected all forms of summary punishments like those pursued by Empson & Dudley, or to carry out particular statutes against trades, &c., and adopted to enforce revenue. Lacking all the essential elements of a jury trial, and its results in acquittal of the crime and deliverance from the accusation; and authorizing trial where property is seized without the district where the crime has been committed;—a form of trial without issue joined and without reference to informing the accused of the nature and cause of the accusation against him; a form of trial entirely perfect, though the accused, the person to be punished, is not confronted with the witnesses against him, the statute which authorizes this proceeding in rem is destructive of both the principles and the letter of the constitution.

And these proceedings in which it was determined that the crime of one man should be visited upon another; taking away his estate in the property for an offense of which he was entirely innocent do not especially extend the enormity of this violation of the law. A law which allows a man to be punished in his absence, without knowledge of the cause of accusation against him, and without being confronted with the witnesses against him, directly ignoring the provisions of the constitution reaches its legitimate consequences when it indiscriminately punishes the innocent with the guilty. It but repeats those enormous oppressions "to extort money" practiced by Henry VII.

As we have seen, the people repealed the acts of Parliament and amended the common law, thereby establishing in all its symmetry the trial by jury—establishing it deliberately as the bulwark of liberty and justice.

V.

It has been decided that the matter attempted in this suit is not only unknown to the common law, but is impossible within due course and process of that law.

The authorities for this point are found in the opinion of Buller, J. (in which Lord Mansfield concurred) in *Le Caux* v. *Eden*, (2 Douglas, 612–613,) and in the opinion of Lord Mansfield in the great case of *Lindo* v. *Rodney*. (Ibid 613–618.)

Lord *Mansfield* says (p. 614): "The whole system of litigation "and jurisprudence in the prize court is peculiar to itself." * * * "The end of the prize court is to suspend the prop- "erty till condemation * * * * to condemn "finally, if the goods really are prize, against everybody, giving

"everybody a fair opportunity of being heard. A captor may and "must force every person interested to defend, and every person "interested may force him to proceed to condemn without delay." This is precisely the matter attempted in the case at bar, but Lord Mansfield says: "*These views cannot be answered* in any court of "Westminster Hall, and therefore the courts of Westminster Hall "have never attempted to take cognizance of the question of 'prize "'or not prize'; not from the locality of being done at sea, as I "have said, *but from their incompetence to embrace the whole of the "subject.*

"As to plunder or booty in a mere continental land war with- "out the presenee or intervention of any ships or their crews * "* there is no instance in history or law, ancient or "modern, of any question before any legal judicature ever having "existed about it in this kingdom."

* * * * *

"Upon the declaration of war or hostilities, all the ships of the "enemy are detained in our ports, to be confiscated as the prop- "erty of the enemy if no reciprocal agreement is made. They can "only be condemned in a court of prize."

The common law courts and process of law, that is of the law of the land, were not only incompetent to bring in the parties in this manner, and the system of litigation and jurisprudence in the prize court was peculiar to itself, not only in form, but in origin and substance, and for this reason the jurisdiction of the law of the land was excluded.

"Mr. Justice Buller (p. 602) shows it established "that the ad- "miralty has the sole and exclusive jurisdiction, and *that the courts "of common law have no jurisdiction at all of such questions.*" He also quotes a decision of Lord Mansfield, that if an action of tres- pass is brought in England for taking a ship *as a prize*, though taken wrongfully, if the defendant pleaded not guilty the plaintiff could not recover. The distinction is found in the words "as a prize," which are italicized in connection with the pregnant words, "in England," because the case is not cognizable by the law of the land; as Lord Coke expresses it: "*lex terræ extendeth not to it*, but "the admiral hath connusance thereof and may proceed *according to "the marine law* by imprisonment of the body *and other proceed- "ings than have been allowed by the laws of the realm.*" (2 *Co. Inst.* 46.)

At page 606 the case of *Brown* v. *Franklyn* (Carthew, 474) is quoted that "prize or not prize" *was a matter not triable at common law*, but altogether appropriated to the jurisdiction of admiralty. The next case quoted with approval, *Kay* v. *Pearse*, gives us this reason: "The true reason why the jurisdiction is appropriated to "the admiralty is, that prizes are acquisitions *jure belli*, and jus

"belli is to be determined by the law of nations and not the par-
"ticular municipal law of any country." * * "Though,
"therefore, I do agree that the jurisdiction of a court of admiralty,
"generally, is limited to matters arising *super altum mare*, and is,
"in that respect local, yet I do not take it to be so in case of prize;
"for the jurisdiction does not depend on the locality, but the na-
"ture of the question, *which is such as is not to be tried* by any
"*rules of the common law but by* a more general law which is *the*
"*law of nations.* * * If the common law has not ju-
"risdiction of the subject, no admission of parties can give it juris-
"diction." And "if the original taking be not a trespass connusable
"at common law, the sentence of the admiralty court" (that the thing was not a prize) "cannot give a jurisdiction to this court
"which it had not before. That sentence does not alter the nature
"of the original taking. It was still a seizure as prize, which the
"common law does not take notice of as trespass; and the sen-
"tence cannot make that a trespass which was not so at the time
"when the fact was committed." (p. 612.) The subject "is alto-
"gether appropriated to the sole jurisdiction of the admiralty"(ibid).

"THE PRINCIPLE is that the question *'prize or not prize,' and 'all the consequences* of it are connus ble solely in the admiralty
"court; *the true reason of which is,* that prizes are acquisitions *jure*
"*belli*, and the *jus belli* is to be determined by the law of nations
"and not by the particular municipal law of any country."

Though the authority of a prize court is exercised by the court of admiralty, it is a distinct jurisdiction (p. 613). Lord Mansfield continues (p. 614): "The whole system of litigation and jurispru-
"dence in the prize court *is peculiar to itself, and is no more like*
"*the court of admiralty* than it is to any court in Westminster
"Hall." "To constitute *that* authority" a special commission under the great seal, issues in every war.

This court has distinguished that there is a *jus belli:* applicable even within the boundaries of the United States, determined by the laws of nations and not by the particular municipal law of the country.

To what extent this law was applicable to the reprizals and seizures made upon land by virtue of the powers of war, and what jurisdictions might have been created or exerted from this foundation are not now to be considered, for all the rights claimed and all the powers asserted in the case at bar are to be determined by the particular municipal law of the country and not by the law of nations.

It is to be observed in passing that wherever this course and process of law is applicable, it compasses the whole subject and all

its consequences. If the seizure is illegal and the act in fact a trespass, the adjudication includes all personal injuries as well as the status of the thing, and the party can have no remedy elsewhere.

The proceeding to ascertain the damages is by assessors and without a jury. (Willes, J. p. 601.)

Magna Charta, ch. 29. "No freeman shall be taken or imprisoned or be disseized of his freehold or liberties or free customs, or be outlawed or exiled, or any otherwise destroyed, nor,—we will not pass upon him nor condemn him but by the lawful judgment of his peers or by the law of the land."

Lord Coke repeats: "Nisi per legem terræ: but by the law of the land; that is, to speak once for all, by due course and process of law. No man be put to answer without presentment before justices or of record, or by due process or by writ original, according to the old law of the land. *And aptly* is it said in this act: '*per legem terræ*'; for in those cases where this law runneth not other laws are allowed in many cases and not prohibited by this act." (2 Co. Inst., 46.)

In a time of profound peace in the depth of the interior, these proceedings under the law of nations and by its course and process are prohibited by this act and by the constitution of the land. The one excludes the other; and we are not within the distinction of war seizures or admiralty seizures made on the sea and tried *in rem* without a jury; or made on land and tried *in rem* with a jury. It is not a case of admiralty jurisdiction coming within the origin, the reason and the form of that trial, and it cannot be tried at all by seizure and *in rem*. A freeman must *be brought to answer*, and he *must be brought to answer* as aptly as it is said *per legem terræ*, according to the old law of the land.

Edward Roby,
Counsel for Plaintiff in Error.

Recapitulation.

In closing this series of cases I can only regret that powers of mediocrity have produced so lame a presentation and thank your honors for the personal consideration shown.

A year ago in a little brief I suggested three propositions, viz.: (1) *This Government is a government of law.* (2) *It is just, wise and simple.* (3) *Its simplicity has been clouded as to taxation.*

In November in oral argument I endeavored to illustrate the spirit of the time in examples of the overthrow and defiance of the law by men charged with executive duties; bringing illustrations from the district school director or trustee; the counsel and the taxing authorities of cities; the keepers of city prisons and captains of police, and ending with cases then at bar, in which, though

it had been admitted that the plaintiffs had clear and undeniable rights, the defendants simply denied the power of the law to protect them; and the highest law officers of the executive department of the nation appeared to tell the judicial department that it was powerless. The Solicitor General appeared by "Brief *for the United States,*" and the Attorney General in person for the defendants, demonstrating to the court that this government is not a government of law; but a government of men, a government of officers, like those defendants:—demonstrating that it is not just; and in those two demonstrating that it is not wise.

Not wise. They were but addled fools that ordained such a constitution to establish justice.

A year ago I said that its simplicity had been clouded as to taxation by obiter remarks and theories, which were advanced as *assumptions* for the purpose of *illustrating* an argument or opinion. I have never heard an argument go back of them and believe none can,—for between *the fundamental principles* of taxation and these assumptions is an hiatus which no argument can bridge—a breach which widens as we contemplate the fundamental principles of government, and endeavor to reconcile these assumptions with the principles and definitions of taxation which are and must be fundamental. Five of these assumptions were stated. (1) A theory drawn from the vagaries of one or two political economists (so called) upon the elements of indirect taxation, based on an assumption to which we will refer. (2) The assumption that a government created to establish justice and insure security, by a written constitution of enumerated powers, possesses in addition indefinable elements of sovereignty. (3) Power to tax the exercise of a trade or franchise implies the power to regulate or to prohibit the exercise of that trade or franchise. (4) Power to take a part as an uniform proportion, implies the power to seize the whole. (5) Power to tax includes the power to destroy. And there is a kindred assumption which was not stated, viz.: that the legislature can make that evidence which is not evidence. Evidere veritatem whereby the mind seeing the truth directs the tongue to announce the truth—*veridictam.*

We had an illustration in Mason v. Mann, Mason v. Hart, The United States v. Singer, and the Same v. Van Buskirk, of prescription of a rule of evidence, (seeing the truth) to overthrow the truth. Lying like old Polonius and in the cloud seeing anything commanded. Yet like the ray of light the truth breaks through. Seen by and in the ray of truth alone the fact records itself on the retina of the mind The form is round or square, the color black or red, as the experience of years has taught the brain, and no command can change this deduction of form or color; nor can anything explore the darkness and return the truth from its recesses to the eye, but light alone. Command it as you will, and let the tongue

answer as it will, the eye sees nothing but by light, it forms no judgment but by the evidence of light and its own experience.

Like this also is making prima facie evidence or (evidence which is conclusive on the judgment unless disproved); changing the burden of proof, whereby the judicial deparment whose sphere is judgment and which is within its sphere supreme, is compelled upon precisely the same state of facts to enter a judgment against its judgment.

Thus this assumption, if true, is a paradox.

The second, third and fourth assumptions are, if true, paradoxes tersely stated, yet precisely stated according to the facts developed in this series of cases. The fourth assumption being entirely incon sistent with the decision of Gibbons v. Ogden, 9 Wheaton, 199.

To the first assumption we recur; the only one not apparently a paradox if true in fact. It is the double assumption (1) that a tax laid on an article which is intended for consumption is necessarily paid by a third party and is thus indirectly laid upon him (2) and this is the test of indirect taxation.

We observe as to every article destroyed in the hands of the producer or importer after he has paid the tax, that this tax never reaches any third party. Alcohol may leak or evaporate, all products may be burned, and from universal experience it is evident that some must be burned or destroyed and destroyed in irregular masses in such a manner that the tax paid on it can never be recovered from any third party. There are many other cases (certain to exist) in which the tax is required directly of the first owner and never can reach a consumer. Therefore if that is the test, as the test does not apply in such cases such cannot be cases of indirect taxation, and if laid by the rule of indirect taxes they are void.

These political metaphysicians assume that a tax laid on an article in the hands of a vender will be added to the price for which it is sold, and thus collected by him from the consumer; indirectly reaching that individual. This assumption is contrary to natural laws, and can be illustrated only by the results of accident or an entirely artificial state of affairs.

It is a rule of speculation that a necessary commodity is worth what it costs to produce it, and when the price falls far below, it is safe to purchase for speculation. But this rule is irregular and depends on contingencies. Before the war cotton fabrics had been for years produced in England and France in excess of the market, and were sold below cost merely to keep the mills running. Iron masters have run for months selling at a loss, and from 1866 to 1870 the market price of highwines has with but two exceptions been uniformly below the cost of production. And in the spring of 1870 there was scarcely a distiller in the northwest who was not insolvent.

The elements which make up the cost of an article are various

and contingent. Cost of raw material, interest on capital required, taxes, wages, skill employed, freight, climate and a thousand other items. The elements which make up the selling price are diverse. The cost of raw material when it was purchased does not affect the buyers views; it is its present price. Close money markets which increase the interest on capital and cost of production, at the same time reduce the selling price; while wages are more dependant on the value of food and rents than anything else; for instance, food in St. Louis and rents in Albany being cheaper than in Washington, printers' wages are correspondingly lower. Skill employed is an important item. The nailers of Bellaire buy their iron at St. Louis, ship it 1300 miles and ship the nails back to sell at a profit at St. Louis and Belleville, at a price at which St. Louis and Belleville nailers are loosing money, or barely making a margin. In competitive markets the cost of the article comes out of the producer, no matter what items compose it, whether taxes, freights, commissions or anything else. The grain from Iowa sells for no more in New York than the grain of that state. And this brings us to the only case in which the producer can lay any tax or item of cost upon the consumer with any certainty of getting it back, and that is a case of monopoly. Yet a monopoly is not worth a cent without a market. I have seen petroleum a drug, at twenty-five cents a barrel, of forty gallons, and corn at eight cents a bushel, and potatoes at nothing. The assumption which we are considering is false in fact, and entertained only by a few mere theorists, who, if my memory serves me truly, have sandwiched it between a theory that the enhanced value of land from the general prosperity of the state or growth in its population belongs not to the owner, but to the state, and other doctrines equally attractive.

In Mason v. Rollins we considered the simplicity of the distinction between the two kinds of taxes; that is between the two kinds of forced contributions by individuals to support the state: viz, direct upon the individual, (capitation or other direct taxes on the person with reference only to numbers and not to property) and indirect,—laid on property or franchises, and reaching the individual—compelling individual contribution indirectly; and in Mason v. Mann, and three other cases, we saw how clearly this had been defined by the whole course of the common law.

We come now to the last assumption, viz: "A power to tax includes a power to destroy."

The power to tax implies the obligation to preserve.

Direct taxes are laid without reference to property uniformly. Indirect taxes are laid uniformly with no varying rule on account of ownership, and the right to lay them is a concession of the owners on account of the advantages of protection. If society is to destroy or gorge itself with the whole because it has obtained the power under the guise of a protector, and this is justified under

the phrase that "power to tax includes the power to destroy;" the german fable of the wolf, which, having agreed to protect, was given the charge of the fold, and then devoured the sheep, is without a moral. Upon the doctrine stated, this wolf was acting on sound constitutional principles, for the power to protect includes the power to destroy—making it lawful.

Illustrations sometimes assist the understanding, but their special province in argument is to mislead the judgment. And thus it has been established that though the power to tax grows out of the obligation to protect and implies the duty of protection, the power to tax includes the power to destroy. The train of reasoning which leads to this anomalous conclusion is from illustration. (1) Taxation of a certain thing in a particular manner is legal. (2) Taxation of this thing in this manner is liable to destroy it. Ergo: the power to tax includes the power to destroy. In other words equal rights, equal birth, equal privileges; equality in the eye of the law, having established the right to frame the constitution and form of government to establish equal justice and equal security; this constitution necessarily includes the power to destroy the end, if it is possible to do so under color of any of the means authorized for the purpose of accomplishing that end and no other. Old counsel have more than once lectured me upon the indiscretion of using precedents which might in any portion operate against me, and still more often upon my repudiating any attempt to reconcile principles or adjudged cases with a fallacy which is received as sound doctrine. The fashion seems to be to fear that prejudices may be excited and pride of opinion roused to wrest the law. It may be that I have adopted an unwise plan in presenting the whole scope of the doctrine, but experience has not yet demonstrated such a result.

The exercise of the power to tax is essential to the existence of the nation, and affects the liberty and security of every citizen. The subject is of the gravest importance, and while it is hard to believe that destruction of liberty, security and justice are necessary or proper means for perpetuating the existence of government in times of peace; it is of far more importance both to my client and myself that the principles be correctly settled than that by any distortion or evasion we should succeed. We therefore meet this idea squarely rather than leave our flank exposed to its guerrilla attacks.

The exertions of any power ought to tend toward the accomplishment of the object for which it was created. If the exertion in a particular manner operates to defeat the end, there is an illegitimate use of the power. And however desirable the ulterior end may be, or however anxious majorities may be to accomplish certain results, this only adds reasons for scrutinizing the exertion and scrupulously confining the action within the intent and constitution of the power.

The feudal origin of our law illustrates the principle. The oath of fealty bound the tenant to do the accustomed services and render the duties for the lands which he held of the lord—nothing more—and if the lord failed in his duty toward the tenant, oppressed him or seized his fee, this dissolved the tenancy and absolved the tenant from allegiance. The duties were reciprocal. The tenant must pay the duties accruing to his suzerain on account of his lands, but the lord must maintain him in his tenure.

Henry Clay predicted: "this government will go down in a despotism worse than that of Constantinople," and it is possible we have already seen the beginning of the end. Possible that we have seen the instruments created to establish justice and promote the general welfare already turned to its destruction. Cæsar returned across the Rubicon to subvert Rome. The bayonets of the national armies have more than once turned against the government they supported in France, but material forces only follow the revolution of ideas; they exhibit the result, not the cause.

We considered the liberty of the Saxons and security of private rights; the grant of these liberties by the Norman king, and the pledge that no freeman shall be in anywise destroyed, and saw that it was the worst destruction that was done by color of justice. With Blackstone we felt that this was the palladium of English liberty, and we knew that its spirit breathed in every line of our own constitution; yet, in an unfortunate hour, misconceiving the perversions of English law a great man said that a power to tax includes a power to destroy.

One step is taken toward destruction; perhaps another step preceeded. In construing the constitution, unfortunately the light and learning of the common law was not considered. The principles of just taxation were all ignored; principles established in time whereof the memory of man runneth not, and continued unbroken save by anomalous exertions of power, condemned even by Blackstone. No common law was mentioned, nor was Maddox, nor Coke, nor Fortescue, nor Plowden, nor Burlemaqui, nor Grotius, nor Puffendorf; not one precedent from the land from whence our institutions were derived, nor one principle from the philosophers in whose works on the law of nature and of nations is found the growth and crystalization of the principles which were embodied in our declaration of national existence, in our constitution and in our national life itself—not one was quoted, but as we saw the authority of a stranger to these principles, a mere materialist was adopted—and thereupon opinions expressed that coupled with the clause of the constitution, subvert every idea of equal and uniform taxation. It is possible that was the first step astray when Smith was substituted for such lights in the law, and his unfounded theory was set up as a moloch in Israel to receive the sacrifice of

equal right. Once established, these theories made it impossible to proceed simply and directly to make property pay, and enabled classes to shift upon others the burdens they should share.

The next step was when the judicial department abdicted the place of an equal and co-ordinate department, and reversing Marbury v. Madison, assumed the place of a subordinate and derivative department, the least of all the departments of government. Then we span the time to the case at bar, and find the trial by jury overthrown, and an anomalous proceeding substituted. We find that the innocent may be punished for the offence of another. In the series of cases we find the laws of evidence subverted, the judgment of courts taken away, and they bound to find contrary to judgment; reversed directly by the arbitrary command of the statute, or indirectly by being compelled to give undue weight to evidence, insufficient in itself to move their judgment—called perhaps by the deceptive name prima facie, but in fact conclusive against the better judgment of the court, unless the oppressed party has still proof enough left to maintain his case. We find legislative power delegated to a single tyrant, and we have read his edicts to crush the good with the bad. Property seized by a general sweeping warrant of statute; freehold disseized and custodians installed with the keys; liberty invaded and absolute and even menial service exacted at the command of the ministers of the law; private right destroyed, private property and liberty taken away; and when we come for justice the highest ministers of the law meet us with this: "Go to your states for protection, let them nullify "the laws and set up the standard of rebellion to protect your un- "doubted rights; this is the only remedy the congress has vouch- "safed to you; the courts of your country are powerless to afford "you protection; they are defied."

Tax cases can seldom be argued and decided singly without mutilating the system and science of this most important branch of government. Sufficient thought will not be bestowed upon one case, nor will its principles be weighed and examined in all their bearings; therefore I have brought this series. In them I have bestowed labor far beyond any hope of reward from my clients, but I took them willingly and have loaded the safety valves of life itself with labor, because Henry Clay never saw half the dangers that I have seen and felt. The time is ripe, the nation is in the very jaws of peril, yet I believe the government will not go down in despotism, but will be free. The constitution is simple, very simple; made by the common people to express their intent, it is incapable of abstruse theories. The nation is fundamentally democratic and its law of existence is common sense. Taxation is simple, very simple: and is entirely practical in its simplicity. From the jaws of peril we shall sail into the open sea. This government will again assert its peculiar glory: a government of laws

and not of men. It will again be just; will be wise; will be simple; and its simplicity as to taxation will be unclouded. In its workings again in peace we will find its constitution a law for rulers and people, covering with the shield of its protection all classes of men at all times, and under all circumstances.

This series of cases is closed; if the labor bestowed could lead to this result, though it had cost a life, it would have been a life well spent—as Mr. Lincoln said among the graves at Gettysburg—"that government of the people, by the people, and for the people, shall not perish from the earth."

Respectfully submitted,

Edward Roby, Counsel.

IN THE SUPREME COURT.

213 Kegs of Fine Cut, etc.
Charles H. Waterman
v.
The United States.

No. 183.

ADDITIONAL NOTE TO PLAINTIFF'S BRIEF.

On page 23 of my brief is a reference to the resolutions of Parliament upon the conduct of a Chief Justice in compelling a special verdict. I had intended to read a portion of this case from the report in one of the volumes of State trials, (trial of Chief Justice K——). In the absence of the books I can make no better reference than memory now affords. Yet the case is important, for while Bushell's case (Vaughan 150) decided the same matter, the decision of Parliament was that of the highest and most absolute authority upon the constitution of England and the province of English juries.

"*Forsythe's History of Trial by Jury.*"—(A book, published in 1852, and now easily obtained at a cost of $2.50,) is an elaborate argument to prove that the province of the jury is not judicial, p. 45, and that it is bound, in all cases, to return a special verdict, merely finding the facts for the assistance of the judge; pp. 8, 11, 21, 44.

At page 45, he thus states "the original and proper "functions of an English jury:—It was never intended "that they should determine any questions of law. *They "had, in fact, no judicial duty to perform.*"

While this book, as the research of an antiquarian professor is interesting to the learned, who will detect the thousand inconsistencies and total lack of logic. And while it is valuable to him as translating some antiquities that he would not examine, and, perhaps, proving what it endeavors to combat; it is not one that a lawyer would give to a beginner, who takes assertions on trust; for, a novice might suppose that the general public were all mistaken about a jury trial. That Spelman had not written what I translated for your Honors (brief, p. 26) and Matthew Hale, Bacon, Camden, Erskine, Fox, Blackstone, and all had been mistaken, and that the people of America did not understand a jury trial as these had done. Yet, upon page 265, he admits: "It cannot, "therefore, be denied that, *in all criminal cases*, the jury "do virtually possess the power of deciding questions of "law as well as of fact. In trials of felony, if jurors "choose to assert, contrary to the law, by a verdict of *not* "*guilty*, that, admitting all the facts to be proved, no "legal offence has been committed by the prisoner—he "must inevitably escape: for there can be no second trial, "he having been already once in jeopardy upon the "charge."—(p. 263.)

At page 278 our author quotes the act of Parliament (32 Geo., 3, 30) passed in 1792, declaratory of the common law, in which that court of supreme judicature, in "an act to remove doubts respecting the functions of juries in cases of libel," declares substantially as in 1667 it had as to another chief justice, that Lord Mansfield had usurped powers beyond the constitution and that in libel, "as in all other criminal cases" the jury may give a general verdict upon the whole matter put in issue, or may find a special verdict *in their discretion*. Our author does not see that this is precisely the declaration of Justice Vaughan; "yet the jury find not (as in a special verdict) the fact of every case by itself leaving the law to the court, but find for the plaintiff or defendant upon the issue to be tried, wherein they resolve both law and fact complicately and not the fact by itself; so as though they answer not singly to the question what is the law, yet they determine the law in all matters where issue is joined and tried in the principal case; but where the

verdict is special, to which no man can oblige them against their wills."

Lord Mansfield was not great as a constitutional lawyer and the cases quoted by Forsythe at page 268 present him in a role and character so different from that in which as lawyers, we are accustomed to regard him, that we are reminded where his name is written in history. In public affairs, Lord Mansfield never rose to rank with statesmen. A bitter partizan of royalty, the hater of popular institutions and principles of freedom as developed in America; he too was a great supporter of a principle of which this court said in 1792 (2 Dallas, 458)—"on which a plan of systematic despotism has been lately formed in England and prosecuted with unwearied assiduity and care." (See my argument in Mason v. Rollins, p. 230 for the gist of this opinion.) It is true he did oppose unwarranted assumption of power by sheriff's inquests and inferior officers, but as touching the Regal office and his own he was an advocate of usurpation and centralization and an usurper; and a hater of American ideas of liberty as drawn from the English constitution. He looked down upon the people. From the beginning of our complications to the end he was our enemy and the enemy of our principles. We repudiated him and his doctrines in the outset, and as we have seen the parliament refused to acquiesce in his view of the *servile office* of juries, and in 1792 recorded its repudiation.

I would not be thought to advocate any factious actions on the part of juries, nor any impracticable theories of their independence. What I have striven to do, is to bring clearly and vividly to view this fact, that, whether wisely or not, this nation has so framed its institutions, that on the *guilty* or *not guilty* of a jury, and on nothing else, the lives, liberty and property of all the people depend. Has laid upon the people the responsibility: each man to judge his neighbor; and has made them the living bulwark of the laws. In all cases where a man is, by prosecution, to be deprived of life and property, or of liberty, because he has committed a violation of the law, he is to have a "public trial *by an impartial jury* of the State and district wherein the crime shall have been committed;" he is to be accused and to be confronted with the witnesses

against him in the presence of the jury. He may challenge these his judges, by their array or polls, for cause, for favor, or peremptorily, and when he has accepted an impartial twelve, the witnesses must *confront him* in the presence of the jury, whose verdict is his conviction or acquittance and complete discharge from all accusation for that violation of the laws.

When a suit *in rem* is to be substituted for this tribunal and this form of prosecution, constituted with all the safeguards which the common law has provided and the constitution has added, the power must be invoked which made that constitution and alone can amend it.

With all humility, and without desiring to cast the slightest disrespect upon those distinguished men who in the Congress, the Cabinet, and in the field performed by the people's aid such prodigies of government, finance and war as to give a lustre to free institutions never dreamed in the outer world before, I may venture to suggest that some have forgotten that description which the great Lincoln engraved upon the tablet of history—*government of the people, by the people, and for the people.*

As I have studied this subject, it seems to me that the central and fundamental principle of a jury trial, *is the direct and individual participation of each man in the administration of all the laws.* The people are responsible not only to try those committed to them—they are also responsible to bring forth offenders to answer unto the law. With this system England has been measurably free without the ballot; without it France has never been free with the ballot. France has always made a government *over* the people; we have made a government of the people. And so when a nation of Europe introduces the jury trial, it raises the people to a share in the government. It is not so much enfranchised in the protection of its criminal population, as in raising each man to a share and responsibility in the application of the laws. In other departments many are not represented; they vote, but the election is against their choice, but in the judicial administration of the laws the people all share—all apply and enforce the laws.

It is not so much that twelve men of average stupidity are required to be called in to decide questions of fact, to

the exclusion of the judge from whom they take instructions, and to whom they look up as a superior being; the object is not so much to exclude wisdom and great experience and substitute the votes and ignorance of twelve inexperienced talesmen as an arbitrary provision for ascertaining mere facts—the object, as I conceive it, is in this dark extremity, when for violation of law the people are endangered and the violator must answer to the law, to bring the person charged face to face with others not one whit above or below him, who feeling the responsibility and need to protect themselves and their families, the government and the laws committed to their charge, yet feel their equality with the accused; who in turn instead of looking to the stern embodiment of a distant power in the person of an exalted judge, looks into the faces of the twelve men; enough to inspire his respect, yet each his equal and his neighbor, with familiar ideas and modes of thought, and differing from him only as they are entirely without passion or prejudice in the matter, and are chosen in it to be the judges of his guilt or innocence.

This indeed brings the government very near the people. So contemplating it we need not seek in rhetorical sentences to sound its praises. We shall see almost divinity in the organization of a system at once so deeply complicated and yet so simple in application and so capable of good.

The object of such a system—or if I have mistaken its object, the form of the jury system and trial contemplated in the constitution cannot be reached by a mere inquest into the status of a thing.

In my main argument, at page 10, I referred to the fact that the seizures were void, having no valid warrant.

If the court acquired possession of the thing illegally, such possession could not confer jurisdiction, but made it illegal to detain or adjudge.

I have already, at this term, laid before the court the subject of general warrants, and as my client and I have been pretty thoroughly burned out, and can't afford

to reprint it, I will refer to the argument in *Mason* v. *Rollins*, pp. 246–257.

Also upon the point that these forfeitures are excessive, cruel, unusual, and therefore unconstitutional. (Same argument, pp. 268–272.)

Also upon the point that one of the rights reserved to the people was the right of each individual to keep his property and live of his own till convicted of crime by due process of law. (Same argument, pp. 276–287.) Especially p. 282, 1st, etc., 286, and 459.)

Reference may also be made to pp. 294, 303.

On the subject of these general warrants and trial by jury, pp. 305, 307, 309–323, 463–466, 487–498.

Respectfully submitted,

Edward Roby,
Counsel for Plaintiff in Error.

In the Supreme Court of the United States.

DECEMBER TERM, 1871.

213 KEGS OF FINE-CUT CHEWING TOBACCO, &c., CHARLES H. WATERMAN, *Claimant, Plaintiff in Error,*
vs.
THE UNITED STATES.
No. 183.

In Error to the Circuit Court of the United States for the Northern District of Illinois.

BRIEF FOR THE UNITED STATES.

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BRIEF FOR THE UNITED STATES.

THE CASE.

This is an information for a forfeiture claimed under the 48th section of the internal revenue act of June 30, 1864, (13 Stats., 240,) which declares—

"That all goods, wares, merchandise, articles, or objects, on which duties are imposed by the provisions of law, which shall be found in the possession or custody, or within the control of any person or persons, for the purpose of being sold or removed by such person or persons in fraud of the internal revenue laws, or with design to avoid payment of said duties, may be seized by any collector or deputy collector, who shall have reason to believe that the same are possessed, had, or held for the purpose or design aforesaid, and the same

shall be forfeited to the United States; and also all articles of raw materials found in the possession of any person or persons intending to manufacture the same for the purpose of being sold by them in fraud of said laws, or with design to evade the payment of said duties, and also all tools, implements, instruments, and personal property whatsoever, in the place or building, or within any yard or enclosure where such articles, on which duties are imposed, as aforesaid, and intended to be used by them in the fraudulent manufacture of such raw materials, shall be found, may also be seized by any collector or deputy collector, as aforesaid; and the same shall be forfeited, as aforesaid; and the proceedings to enforce said forfeiture shall be in the nature of a proceeding *in rem* in the circuit or district court of the United States for the district where such seizure is made, or any other court of competent jurisdiction."

The information was filed in the district court of the United States for the northern district of Illinois on the 6th of March, 1866, and sets forth that theretofore, to wit, on the 5th of February, 1866, at Chicago, in said district, certain goods, &c., consisting mainly of tobacco, manufactured and unmanufactured, together with a steam-engine and implements used in the manufacture of tobacco, were seized by, and still remained in the custody of, the collector of internal revenue, as forfeited to the United States for causes thereinafter mentioned. It then, in separate articles, charges—

1st. That, at the time of the seizure, the manufactured tobacco, &c., seized as aforesaid, were articles on which duties were imposed by the internal revenue laws, and that they were found in the possession, custody, and

control of Chas. H. Waterman, for the purpose of being sold and removed by him in fraud of the internal revenue laws, and with design to avoid payment of said duties, contrary to the statute, &c.

2d. That, at the time of the seizure, the raw materials, or unmanufactured tobacco, &c., seized as aforesaid, were found in the possession of the said Waterman, who was intending to manufacture the same into smoking and other kinds of manufactured tobacco upon which duties were imposed by the internal revenue laws, for the purpose of being sold by him in fraud of said laws, and with design to evade the payment of said duties, contrary to the statute, &c.

3d. That, at the time of the seizure, the steam-engine and implements, seized as aforesaid, were found in the building and enclosure where the said raw materials, &c., were found, to wit, in the tobacco factory of the said Waterman, in Chicago, and were intended to be used by him in the fraudulent manufacture of said raw materials, &c., contrary to the statute, &c.

Concluding with a prayer for process against the property seized, to enforce the forfeiture thereof, &c.

Warrant of arrest thereupon issued, on which the marshal duly made return that he had attached the property, and had also "given due notice by publication and by posting up" according to the command of the writ.

On the 23d of March, 1866, an answer was filed in behalf of Matthias Clump, who intervened as mortgagee of a portion of the property seized. (Record, p. 7.)

On the 31st of same month an answer was filed in behalf of the aforesaid Charles H. Waterman. (*Ibid.*, pp. 8 to 14.)

On the 3d of April, 1866, an answer was filed in behalf of Robert Reid, who intervened for his interest, and for the interest of the Bank of Montreal, as its agent, in a portion of the property seized. (*Ibid.*, pp. 16 to 18.)

Neither the first nor the last of these answers put in issue any allegation contained in the information, and the persons in whose behalf the same were filed took no part in the case afterwards.

The other answer, that of Waterman, as to the allegations contained in the first article of the information, admitted the seizure of the property at the time and place mentioned, and that it was found in his possession, custody, and control, but denied that it was in his possession, &c., for the purpose of being sold or removed in fraud of the internal revenue laws, nor with the design to avoid payment of the duties thereon. As to the allegations in the second article, the answer denied that he, Waterman, was intending to manufacture the property seized for the purpose of being sold in fraud of the revenue law, or with the design to evade the payment of duties, &c. And as to the allegations in the third article, the answer denied that the property seized was intended to be used by him, Waterman, in the fraudulent manufacture of the raw materials mentioned, for the purpose of being sold in fraud of the revenue laws or with design to evade the payment of duties, &c.

The cause was afterwards brought to trial, which resulted in a verdict for the United States, and on the 3d of July, 1869, a judgment of forfeiture was pronounced. (Record, pp. 23, 24.)

A bill of exceptions having been taken by counsel for the claimant, Waterman, the case was subsequently carried by writ of error before the circuit court of the United States for the northern district of Illinois, where, on the 13th of July, 1870, the judgment of the district court was sustained. (Record, pp. 25 to 72, 74, 75, 76.)

From the circuit court the case has been brought to this court by writ of error sued out in behalf of the same claimant.

THE BILL OF EXCEPTIONS.

After setting out all the evidence that was given in at the trial, the bill of exceptions states that the following portions of the charge of the court to the jury were excepted to in behalf of the said Waterman, namely:

"That it was alleged by the district attorney, in behalf of the Government, as tending to make out the case for the United States, that Mr. Waterman, the claimant, had not kept correct and honest accounts of his tobacco transactions; that erasures had been fraudulently made in his books, and entries made showing a sale of a less quantity of manufactured tobacco than the amount he actually sold, and a less quantity than appeared by the original entries which had been erased. And, as bearing on this point, it would be for the jury to determine whether Mr. Waterman did or did not keep correct and honest accounts of his tobacco transactions.

If he intentionally kept an incorrect or untrue account, showing that he sold less quantities of tobacco than he actually sold, then I think that would be material upon the issue.

"That certain erasures have been made in Mr. Waterman's books is not contested; but Mr. Waterman has attempted to explain them, and to show that the first entries were wrong, and it is for you to say, from the evidence, whether these erasures have been satisfactorily explained. The law required Mr. Waterman to keep correct accounts of his tobacco transactions, and it was his duty to do so. Of course he would not be subject to any penal consequences for unintentional error or innocent mistakes in keeping his books. The law applicable to this case is of a highly penal character, and you should be clearly satisfied, by the evidence, of the guilt of Mr. Waterman, or you should find in his favor. In other words, the case upon the whole evidence must be clearly made out, or your verdict should be against the Government. You will be permitted, by agreement, to take to your room the evidence, as it is all documentary, or in the form of depositions, together with Mr. Waterman's books, and you should examine the whole carefully and deliberately before coming to a conclusion."

The bill further states, that the jury, having retired, afterwards returned a sealed verdict in the following words, viz: "We, the jury, find the claimant, Charles H. Waterman, guilty;" that when the verdict was opened in court the district attorney moved to amend it; that it was amended with the consent of the jury, but without the consent of the defendant, and to which he then and there excepted; and that the amended verdict was entered as it now appears of record. (Record, pp. 71, 72.)

THE ERRORS ASSIGNED.

The errors assigned in behalf of the plaintiff in error are the following:

"1. Neither the district nor the circuit court ever acquired jurisdiction of the subject-matter of the suit.

"2. The information was insufficient and should have been dismissed.

"3. The charge of the court was calculated to mislead the jury.

"4. The charge of the court was contrary to law.

"5. The verdict of the jury, 'We, the jury, find the defendant, Waterman, guilty,' should not have been changed.

"6. No judgment could be rendered upon the verdict.

"7. The court should have restored the property to the claimant.

"8. The judgment is against law.

"9. The judgment is against the evidence.

"10 The matters charged in said information are charged as crimes, &c. The seizure, information, trial, and condemnation by the said judgment and proceedings are forbidden by the supreme law of the land, and are void."

REMARKS.

As to the 1st and 2d errors assigned, it is deemed unnecessary, in order to establish how entirely groundless they are, to do more than refer to the provisions of the statute above quoted, and the information, process, return and other proceedings in the record of which mention has already been made.

The 3d, 4th, and 5th errors assigned appear to be based upon the exceptions contained in the bill of exceptions touching the charge of the court and the amendment of the verdict, as above set forth.

It is submitted, that the objections to the charge are not sustainable. The alleged ground of forfeiture of the property seized was the fraudulent intent of the claimant, an intent to defraud the public revenue by evading the tax. For the purpose of showing this intent, evidence that the claimant had not previously kept correct and honest accounts of his tobacco transactions was introduced, and the portions of the charge objected to relate to this evidence. In Wood *vs* United States, (16 Peters, 360, 361,) proof of collateral facts tending to show a fraudulent intention are held to be admissible, whenever such intention is to be established. It was clearly proper to admit the evidence referred to, and we fail to perceive, in the portions of the charge mentioned, any *instructions* of the court to the jury, concerning that evidence, which were calculated to mislead, or were contrary to law.

With regard to the verdict: As originally rendered, this was substantially a finding for the United States, but it was defective in form. Before it was recorded, however, the court, *by consent of the jury*, amended it, by putting it in proper form, and as thus amended it was received and entered of record. The law is well settled, that before a verdict is recorded, the jury may even vary from the first offer of their verdict, and the verdict which is recorded shall stand. (Blakely *vs.* Sheldon, 7 Johns.; Root *vs.* Sherwood, 6 Johns., 68.) So a sealed verdict may be varied from in open court. (Edelin *vs.* Thompson, 2 H & G., 31.) The assent of the jury to the amendment was sufficient to authorize the amended verdict to be recorded.

The remaining errors assigned, viz: the 6th, 7th, 8th, 9th, and 10th, present no objections affecting the proceedings in this case, which a bare inspection of the record will not suffice to disprove.

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